



IOWA ADMINISTRATIVE BULLETIN

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Pages 1483 to 1552

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2011

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 22 '10	Jan. 12 '11	Feb. 1 '11	Feb. 16 '11	Feb. 18 '11	Mar. 9 '11	Apr. 13 '11	July 11 '11
Jan. 7	Jan. 26	Feb. 15	Mar. 2	Mar. 4	Mar. 23	Apr. 27	July 25
Jan. 21	Feb. 9	Mar. 1	Mar. 16	Mar. 18	Apr. 6	May 11	Aug. 8
Feb. 4	Feb. 23	Mar. 15	Mar. 30	Apr. 1	Apr. 20	May 25	Aug. 22
Feb. 18	Mar. 9	Mar. 29	Apr. 13	Apr. 15	May 4	June 8	Sep. 5
Mar. 4	Mar. 23	Apr. 12	Apr. 27	Apr. 29	May 18	June 22	Sep. 19
Mar. 18	Apr. 6	Apr. 26	May 11	May 13	June 1	July 6	Oct. 3
Apr. 1	Apr. 20	May 10	May 25	***May 25***	June 15	July 20	Oct. 17
Apr. 15	May 4	May 24	June 8	June 10	June 29	Aug. 3	Oct. 31
Apr. 29	May 18	June 7	June 22	***June 22***	July 13	Aug. 17	Nov. 14
May 13	June 1	June 21	July 6	July 8	July 27	Aug. 31	Nov. 28
May 25	June 15	July 5	July 20	July 22	Aug. 10	Sep. 14	Dec. 12
June 10	June 29	July 19	Aug. 3	Aug. 5	Aug. 24	Sep. 28	Dec. 26
June 22	July 13	Aug. 2	Aug. 17	Aug. 19	Sep. 7	Oct. 12	Jan. 9 '12
July 8	July 27	Aug. 16	Aug. 31	***Aug. 31***	Sep. 21	Oct. 26	Jan. 23 '12
July 22	Aug. 10	Aug. 30	Sep. 14	Sep. 16	Oct. 5	Nov. 9	Feb. 6 '12
Aug. 5	Aug. 24	Sep. 13	Sep. 28	Sep. 30	Oct. 19	Nov. 23	Feb. 20 '12
Aug. 19	Sep. 7	Sep. 27	Oct. 12	Oct. 14	Nov. 2	Dec. 7	Mar. 5 '12
Aug. 31	Sep. 21	Oct. 11	Oct. 26	***Oct. 26***	Nov. 16	Dec. 21	Mar. 19 '12
Sep. 16	Oct. 5	Oct. 25	Nov. 9	***Nov. 9***	Nov. 30	Jan. 4 '12	Apr. 2 '12
Sep. 30	Oct. 19	Nov. 8	Nov. 23	***Nov. 23***	Dec. 14	Jan. 18 '12	Apr. 16 '12
Oct. 14	Nov. 2	Nov. 22	Dec. 7	***Dec. 7***	Dec. 28	Feb. 1 '12	Apr. 30 '12
Oct. 26	Nov. 16	Dec. 6	Dec. 21	***Dec. 21***	Jan. 11 '12	Feb. 15 '12	May 14 '12
Nov. 9	Nov. 30	Dec. 20	Jan. 4 '12	Jan. 6 '12	Jan. 25 '12	Feb. 29 '12	May 28 '12
Nov. 23	Dec. 14	Jan. 3 '12	Jan. 18 '12	Jan. 20 '12	Feb. 8 '12	Mar. 14 '12	June 11 '12
Dec. 7	Dec. 28	Jan. 17 '12	Feb. 1 '12	Feb. 3 '12	Feb. 22 '12	Mar. 28 '12	June 25 '12
Dec. 21	Jan. 11 '12	Jan. 31 '12	Feb. 15 '12	Feb. 17 '12	Mar. 7 '12	Apr. 11 '12	July 9 '12

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Friday, May 13, 2011	June 1, 2011
25	Wednesday, May 25, 2011	June 15, 2011
26	Friday, June 10, 2011	June 29, 2011

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, May 10, 2011, at 8:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Definition of "attest"—performance of service audits, 1.1

Notice **ARC 9484B**, also Filed Emergency **ARC 9483B** 5/4/11

Definitions; certification; licensure, 1.1, 3.6, 3.14, 3.15(2), 5.1(6), 5.2, 5.6(3), 7.6(3) Filed **ARC 9482B** 5/4/11

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Site development program, ch 77 Filed **ARC 9485B** 5/4/11

HUMAN SERVICES DEPARTMENT[441]

Civil commitment unit, ch 31 Notice **ARC 9481B** 5/4/11

Medicaid remedial services—coverage as behavioral health intervention under Iowa Plan for

Behavioral Health, 77.12, 77.46(3)"a," 78.12, 79.1, 79.3(2)"d," 88.65 Filed **ARC 9487B** 5/4/11

HCBS intellectual disability waiver, amendments to chs 78, 83 Notice **ARC 9497B** 5/4/11

Foster group care facilities and juvenile shelter and detention facilities, amendments to chs

105, 114, 115 Filed **ARC 9488B** 5/4/11

Child abuse prevention program, ch 155 Filed Emergency After Notice **ARC 9489B** 5/4/11

Child care assistance—fee schedule for state fiscal year 2012, 170.4(2)"a"

Filed Without Notice **ARC 9490B** 5/4/11

Family-centered child welfare services, amendments to ch 172 Filed **ARC 9491B** 5/4/11

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Individual health insurance for children under the age of 19, 15.11(6), 36.13 Filed **ARC 9498B** 5/4/11

Autism spectrum disorders coverage, 35.40 Filed **ARC 9500B** 5/4/11

INTERIOR DESIGN EXAMINING BOARD[193G]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Registration renewal, 2.1(4) Filed **ARC 9480B** 5/4/11

IOWA FINANCE AUTHORITY[265]

Entrepreneurs with disabilities program, rescind ch 25 Filed Emergency **ARC 9499B** 5/4/11

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Public access to private land for hunting; landowner grants for wildlife habitat, 22.10 to

22.15 Filed **ARC 9496B** 5/4/11

Mourning dove season, 97.6 Notice **ARC 9495B** 5/4/11

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

License discipline reporting, 5.11 Notice **ARC 9486B** 5/4/11

TRANSPORTATION DEPARTMENT[761]

Federal motor carrier safety and hazardous materials regulations, 520.1(1) Filed **ARC 9493B** 5/4/11

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Certificates of franchise authority for cable and video service, 44.1, 44.3(3), 44.4, 44.6, 44.7

Filed **ARC 9494B** 5/4/11

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Eligibility of Gold Star parents for admission to state veterans home, amendments to ch 10

Notice **ARC 9492B** 5/4/11

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2011.

Senator Merlin Bartz
2081 410th Street
Grafton, Iowa 50440

Senator Thomas Courtney
2200 Summer Street
Burlington, Iowa 52601

Senator Wally Horn
101 Stoney Point Road, SW
Cedar Rapids, Iowa 52404

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

Senator James Seymour
901 White Street
Woodbine, Iowa 51579

Joseph A. Royce
Legal Counsel
Capitol
Des Moines, Iowa 50319
Telephone (515)281-3084
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Representative David Heaton
510 East Washington Street
Mt. Pleasant, Iowa 52641

Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 50317

Representative Janet Petersen
4300 Beaver Hills Drive
Des Moines, Iowa 50310

Representative Dawn Pettengill
P.O. Box 76
Mt. Auburn, Iowa 52313

Representative Linda Upmeyer
2175 Pine Avenue
Garner, Iowa 50438

Brenna Findley
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality program—scope,
services, and funding options,
22.1(3)“b,” 22.106, ch 30,
33.1, 33.2

IAB 2/9/11 **ARC 9366B**

(See Regulatory Analysis,
IAB 4/20/11)

Air Quality Bureau, Suite 1
7900 Hickman Rd.
Windsor Heights, Iowa

May 10, 2011
1 p.m.

NATURAL RESOURCE COMMISSION[571]

Mourning dove season,
97.6

IAB 5/4/11 **ARC 9495B**

Auditorium, Second Floor
Wallace State Office Bldg.
Des Moines, Iowa

May 24, 2011
1 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Board meetings,
4.3(5)

IAB 4/20/11 **ARC 9459B**

Fifth Floor Board Conference Room 526
Lucas State Office Bldg.
Des Moines, Iowa

May 10, 2011
9 to 9:30 a.m.

REAL ESTATE COMMISSION[193E]

License discipline reporting,
5.11

IAB 5/4/11 **ARC 9486B**

Professional Licensing Conference Room
Second Floor
1920 S.E. Hulsizer Rd.
Ankeny, Iowa

May 24, 2011
9 a.m.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Eligibility of Gold Star parents for
admission to state veterans home,
amendments to ch 10

IAB 5/4/11 **ARC 9492B**

Ford Memorial Conference Room
Iowa Veterans Home
1301 Summit
Marshalltown, Iowa

May 25, 2011
10 a.m.
(If requested)

The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
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ARC 9484B**ACCOUNTANCY EXAMINING BOARD[193A]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby proposes to amend Chapter 1, “Definitions,” Iowa Administrative Code.

As part of the Auditing Standards Board’s Clarity Project, guidance on the examination of financial controls at a service organization previously contained in Statement on Auditing Standard (SAS) No. 70 has been replaced by Statement on Standards for Attestation Engagements (SSAE) No. 16. SSAE No. 16 was released in April 2010 and is effective for service auditors’ reports for periods ending on or after June 15, 2011. The Auditing Standards Board has characterized the change as a carefully considered step in reorganizing standards for clarity and convergence with international standards and utility.

In Iowa, this change has the unintended effect of reclassifying service audits (of such entities as investment advisors and data centers) from “attest” services that must be performed by a certified public accountant (CPA) within a CPA firm to nonattest services that may be performed by anyone. Service audits are crucial services and should be performed by licensed professionals guided by the highest standards of professional ethics and competence. Public protection could be substantially weakened in Iowa if the Board does not take steps to ensure that service audits, including the reporting on internal controls of service organizations, continue to be treated as attest services.

The unintended effect will occur in Iowa based on the wording of Iowa Code section 542.3(1)“a”(1) and (3). Currently, service audits are completed in accordance with SAS No. 70, as provided in Iowa Code section 542.3(1)“a”(1). The Auditing Standards Board change will move service audits so that they will be completed in accordance with SSAE No. 16, which is the standard applicable in Iowa Code section 542.3(1)“a”(3). Iowa Code section 542.3(1)“a”(3), however, refers to “prospective” financial information. Service audits on the internal controls of service organizations focus on existing and prior information, not “prospective” information. Now that this issue has been brought to the Board’s attention, the Board may take steps to address the issue. In the longer term, the Board may pursue legislation to ensure Iowa CPAs and service organizations are subject to the same standards as will be applicable across the nation.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before May 24, 2011. Such written materials should be sent to Jodi Adams, Professional Licensing Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa 50121; fax (515)281-7387; E-mail jodi.adams@iowa.gov.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9483B**. The content of that submission is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

ARC 9481B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 229A.15B, the Department of Human Services proposes to adopt new Chapter 31, “Civil Commitment Unit,” Iowa Administrative Code.

Pursuant to Iowa Code chapter 229A, the Sexually Violent Predator Act, the Department has established a civil commitment unit for sexual offenders which is housed on the campus of the Cherokee Mental Health Institute. The proposed new chapter sets policies for this facility in relation to visits, grievances, photographing and recording of individuals committed to the facility, release of information, communications with individuals committed to the facility, use of the buildings and grounds, gifts and bequests to the facility, and recovery of the cost of an individual’s care from the individual or a responsible party.

These rules allow the facility administrator to waive requirements for approval of visitors when an individual is hospitalized. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed rules on or before May 24, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code chapter 229A.

The following amendment is proposed.

Adopt the following **new** 441—Chapter 31:

CHAPTER 31
CIVIL COMMITMENT UNIT

441—31.1(229A) Definitions.

“Business day” means a working day in the usual Monday-through-Friday workweek. A holiday falling within this workweek shall not be counted as a business day.

“Contraband” means weapons, ammunition, tobacco, alcohol, drugs, money, altered authorized property, mood-altering plant material or chemical, obscene material as defined in Iowa Code section 728.1(5), explosives, material that can be used in the manufacture of explosives, or material advocating disruption of or injury to residents, employees, programs, or physical facilities. “Contraband” includes anything which is illegal to possess under federal or state law and materials that are used in the production of drugs or alcohol or used in conjunction with the taking of illicit drugs. “Contraband” also includes anything determined to be banned from individual possession by published facility rules.

“Facility” means the civil commitment unit for sexual offenders.

“Facility administrator” means the person appointed as the administrator of the civil commitment unit for sexual offenders.

“Gift or bequest” means anything of value the facility receives that is intended for use directly by the employees of the facility. Items intended for public distribution, such as clothes or furniture, do not constitute a gift to the facility.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*Grievance*” means a written complaint by or on behalf of an individual that involves a rights or rule violation or unfairness to the individual.

“*Guardian*” means the person other than a parent of a child who has been appointed by the court to have custody of the person of the individual as provided under Iowa Code section 232.2(21) or 633.3(20).

“*Individual*” means a person who has been committed to the civil commitment unit for sexual offenders (CCUSO) under Iowa Code chapter 229A.

“*Minor*” means a person under the age of 18.

“*Money*” means all forms of currency, checks, money orders, stocks, bonds, and any other item that can be used as a medium of exchange for payment for goods or services.

“*Parent*” means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

“*Rights*” means the human, civil, and constitutional liberties an individual possesses through federal and state constitutions and laws.

“*Support team member*” means a person who has agreed to participate in the development and implementation of an individual’s relapse prevention plan.

“*Visitor*” means any person who wishes to visit an individual committed to the facility. “Visitor” does not include the individual’s attorney of record, other court-appointed attorneys, retained experts, the ombudsman or government officials, or facility-approved clergy.

“*Weapon*” means any gun, knife, tool, object, or chemical that can be used to inflict harm on one’s self or another.

This rule is intended to implement Iowa Code chapter 229A.

441—31.2(229A) Visitation. Visitation is considered part of the individual’s therapeutic program. Visits are expected to benefit the individual’s treatment goals while meeting the security needs of the facility and ensuring the safety of the individual and the visitor.

31.2(1) Approval of visitor. All persons wishing to visit a committed individual who is residing at the facility or is in a transition phase shall have prior approval of the facility administrator before a visit shall be permitted.

a. *Questionnaire and background check.* Before being approved to visit, all visitors shall complete a visitor questionnaire and undergo a background check to determine if:

- (1) The visitor has been a victim of the individual;
- (2) The visitor has a significant criminal background;
- (3) The visitor will not hinder the individual’s treatment; or
- (4) The visitor will be a part of the individual’s support team.

b. *Interview.* Upon return of the questionnaire and completion of the background check, an interview shall be conducted with the visitor to determine whether the visitor will be approved.

c. *Minors.* A minor shall not be permitted to visit unless special circumstances exist and the visit is approved by:

- (1) The individual’s treatment team,
- (2) The facility administrator, and
- (3) The minor’s parent or guardian.

d. *Support team member.* A visitor identified as a support team member shall complete a four-hour training course on being part of a support team before being approved as part of the individual’s support team.

e. *Revocation of approval.* Approval of visitors is at the sole discretion of the facility. Approval may be revoked at any time if the facility determines that:

- (1) The visitor rules have been violated; or
- (2) The visitor presents a threat to security or is a detriment to the individual’s treatment.

f. *Approval after revocation.* Once approval is revoked, the person shall be required to reapply for and be approved for reinstatement before being allowed to visit.

31.2(2) Prior notification. Visitors shall call the facility at least 24 hours in advance of a planned visit to schedule the visit.

HUMAN SERVICES DEPARTMENT[441](cont'd)

31.2(3) Visiting hours.

a. Visits shall be allowed on:

- (1) Monday through Friday from 5:30 p.m. to 8:30 p.m.
- (2) Saturdays, Sundays, and holidays from 10:30 a.m. to 2 p.m. and from 2:30 p.m. to 8:30 p.m.

b. Visitors shall not be admitted after 7:30 p.m. on weekdays or after 4:30 p.m. on Saturdays, Sundays, and holidays.

31.2(4) Visitation limits. Individuals shall be allowed a maximum of three hours' visitation on weekdays and a total of four hours on Saturdays, Sundays, and holidays. The number of days per week the individual may have visits shall be determined by the individual's treatment team based on the individual's treatment level. At the discretion of the facility, the visit may be split between two different periods of the day.

31.2(5) Search. All visitors shall be subject to a search before a visit.

a. A visitor shall be required to remove all items from the visitor's pockets and place the items in a locker provided by the facility or take the items to the visitor's vehicle.

b. Visitors shall not be allowed to bring the following items into the secure area of the facility: purses, packages, folders, binders, briefcases, still or video cameras, cell phones, computers, electronic media storage devices, digital or analog recording devices, or any device that can be used to connect to the Internet.

c. Food items may not be brought into the visiting area.

31.2(6) Visitor rules. Each approved visitor shall be given a copy of the facility's visitor rules at the beginning of each visit and shall be required to sign an acknowledgement that the visitor has received the rules and understands them. The visitor rules are as follows:

a. The visitor's name shall be on the approved visitors list.

b. The visitor shall provide 24-hour prior notice of the intent to visit.

c. Upon arrival, the visitor shall check in at the facility master control center.

d. A visitor who is 16 years of age or older shall provide a government-issued photo identification document.

e. A minor who is approved as a visitor shall be accompanied at all times by an approved adult visitor.

f. All visitors shall be subject to the rules of the facility.

g. Visitors shall wear clothing appropriate to the security and therapeutic needs of the facility. Prohibited clothing includes: mini-skirts, shorts, muscle shirts, see-through clothing, or halter tops; clothing or accessories with obscene words, symbols, or pictures; and clothing with gang colors or symbols.

h. For the duration of the visit, visitors shall be required to remove outerwear such as, but not limited to, coats, hats, gloves, and sunglasses. A medical need for sunglasses for protection from normal interior light shall be verified by a physician's prescription.

i. Smoking shall not be permitted in the facility or on the grounds of the facility except in an enclosed private vehicle.

j. A visitor shall not schedule a visit when the visitor has a communicable disease.

k. Visitors shall not be under the influence of drugs or alcoholic beverages.

l. Food gifts or other items shall not be brought into the facility unless prior approval has been received from the treatment program supervisor. Food items may be purchased from vending machines at the facility.

m. All visits shall be monitored by an employee.

n. The door to the visiting room shall remain open at all times.

31.2(7) Denial of visit. All visitors are subject to denial of a visit each time the visitor enters the facility. Visits can be denied by any employee with reason. Reasons for denial include but are not limited to:

a. The visitor's name is not on the approved visitors list.

b. The visitor did not provide notice of the visit at least 24 hours in advance.

c. The visitor's clothing does not conform to the facility visitor rules.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- d.* The visitor does not agree to be searched.
- e.* The visitor is trying to bring contraband into the facility.
- f.* The visitor is or appears to be under the influence of drugs or alcoholic beverages.
- g.* The visitor exhibits disruptive behavior that threatens the safety or security of the facility, individuals, employees, or other visitors.
- h.* The visitor appears to have a health condition that could threaten the health of individuals, employees, or other visitors.
- i.* The individual has been placed on restrictions for a rule infraction.
- j.* The number of staff available is inadequate to supervise the visit.

31.2(8) Termination of visit.

- a.* The facility may terminate a visit at any time when:
 - (1) The visitor or the individual violates any visitor rule during the visit.
 - (2) Because of the actions of an individual or a visitor, a facility employee becomes concerned about the safety and security of the facility, the individual, the visitor, or other visitors.
 - (3) The individual's treatment team determines that the visit is counter-therapeutic or is disruptive to the safety and security of the facility.
 - (4) A crisis in the facility results in an inadequate number of staff available to supervise the visit.
- b.* The facility may either terminate the current visit or, at the discretion of the individual's treatment team, remove the visitor's name from the approved visitors list.

31.2(9) Visits outside the facility. Individuals may visit family and friends outside of the facility when the visit meets all of the following criteria:

- a.* The visit occurs in connection with a death or life-threatening illness in the family.
- b.* The visit receives the approval of the facility administrator. Such approval shall be granted only when:
 - (1) The facility has determined the individual to be a "low escape risk,"
 - (2) The visit will provide a treatment benefit to the individual with no harmful effects on the individual's family or community, and
 - (3) The individual pays all expenses associated with supervision of the visit, including facility expenses such as employee wages and transportation costs.
- c.* The visit is ordered by the court.

31.2(10) Hospital visits. Individuals hospitalized in a community facility may have visitors during the hospitalization provided that:

- a.* The visit does not interfere with the treatment of the individual.
- b.* The visitor is approved as provided in subrule 31.2(1) unless an exemption is granted by the facility administrator.
- c.* The visitor is subject to a search as provided in subrule 31.2(5).
- d.* The visitor is subject to the visitor rules as provided in subrule 31.2(6).
- e.* The visit may be terminated at the will of the facility as provided in subrule 31.2(8).

This rule is intended to implement Iowa Code chapter 229A.

441—31.3(229A) Group visitation. Groups of persons from the general public who wish to visit the facility shall submit a written request and shall be subject to the same security review process as all other visitors.

31.3(1) Request to visit. A group wishing to visit the facility shall submit a written request to the facility administrator at least one month in advance of the requested visit. The request shall state the purpose of the visit and the expected therapeutic benefit for the individuals.

31.3(2) Visitor questionnaire. Each person in the group shall complete a visitor questionnaire and shall undergo a background check to determine if:

- a.* The person has been a victim of the individual;
- b.* The person has a significant criminal background;
- c.* The person will not hinder the individual's treatment; or
- d.* The person will be a part of the individual's support team.

HUMAN SERVICES DEPARTMENT[441](cont'd)

31.3(3) *Visitor interview.* Upon return of the questionnaire and completion of the background check, an interview shall be conducted with each person in the group to determine:

- a. Whether or not the visit will be authorized; and
- b. The location, date, time, and duration of an authorized visit.

31.3(4) *Orientation.* Before entering the facility, a visitor group shall be provided with an introduction and orientation to facility security procedures and to visitor rules that the group will be expected to follow. Each member of the group shall sign a form acknowledging receipt of the visitor rules.

31.3(5) *Denial or termination of visit.* At the discretion of the facility, the entire group or a member of the group may be denied visitation as provided in subrule 31.2(7) or may have the visit terminated as provided in subrule 31.2(8).

This rule is intended to implement Iowa Code chapter 229A.

441—31.4(229A) *Grievances.* Any individual who believes the individual's rights have been violated or who has a complaint concerning the individual's treatment may file a grievance using a form approved by the facility administrator. The individual's family or guardian may file a grievance on behalf of the individual by submitting the grievance in writing to the facility administrator.

This rule is intended to implement Iowa Code chapter 229A.

441—31.5(229A) *Photographing and recording individuals.*

31.5(1) *Visitors.* Visitors shall not be allowed to bring any camera or video or audio recording devices into the facility. An individual who wants to have a photograph taken with a visitor shall request prior permission from the individual's treatment team and make arrangements for paying the cost of the photograph.

a. With approval of the treatment team, a facility employee will take the photograph using facility equipment. The facility shall provide the photograph to the individual requesting it. The individual shall be responsible for distribution of the photograph.

b. The facility shall not be liable for any further use or distribution of the photograph made by the individual or by anyone else who comes into possession of the photograph.

31.5(2) *Public media.* Photographs and video and audio recordings by public media inside of the facility and of individuals shall be permitted only with the prior authorization of the facility administrator and of the individual or the individual's guardian.

a. For security or confidentiality of other individuals, the facility administrator may limit the scope of what is photographed or recorded.

b. Public media representatives authorized to take photographs or recordings shall make every effort to preserve the inherent dignity of the individual and to preclude the exploitation or embarrassment of the individual.

This rule is intended to implement Iowa Code chapter 229A.

441—31.6(229A) *Release of information.*

31.6(1) *Release to news media.* The facility administrator shall be responsible for the release to the news media of information pertaining to the facility. Authority for dissemination and release of information may be designated to other employees at the discretion of the facility administrator.

31.6(2) *Release of confidential information.* Information concerning individuals currently or formerly at the facility which is defined by statute as confidential shall not be released to a person, agency or organization that is not authorized by law to have access to the information unless the individual authorizes the release. Authorization may be given by using Form 470-3951, Authorization to Obtain or Release Health Care Information.

This rule is intended to implement Iowa Code chapter 229A.

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—31.7(229A) Communication with individuals.**31.7(1) Incoming telephone calls.**

a. The individual's treatment team shall determine an approved caller list for each individual based on the individual's request for approval. Incoming calls shall not be approved from a person who:

- (1) Has been a victim of the individual,
- (2) Is a registered sex offender, or
- (3) Has been determined by the individual's treatment team as a person whose communication is counter-therapeutic to the individual's treatment plan.

b. All incoming calls for an individual shall require the approval of the facility administrator or designee before the caller will be connected with the individual to determine if the caller is:

- (1) On an individual's approved caller list, or
- (2) An attorney representing the individual. An attorney representing the individual shall have the right to call the individual at any reasonable time.

c. Approved incoming calls shall not be monitored.

d. The individual has the right to grieve any adverse decision.

31.7(2) Attorney contacts. An individual's attorney shall have the right to visit or have telephone contact with the individual at any reasonable time. The individual shall have the right to call the individual's attorney during normal business hours and at other times with the consent of the attorney. The individual or the attorney shall be responsible for any costs associated with the call.

31.7(3) Interviews. Interviews of an individual by the news media or other outside persons or groups shall be permitted only with the prior consent of the individual or the individual's guardian.

a. All requests for an interview shall be made to the facility administrator. When a request is received, the facility administrator or designee shall:

- (1) Notify the individual or the individual's guardian of the request; and
- (2) Document notification to the individual or guardian in the individual's record.

b. The individual or the individual's guardian shall be free to decide whether an interview is granted.

c. The facility administrator shall determine how, when, and where the interview is to be done, as necessary to maintain the security of the facility.

31.7(4) Mail and packages.

a. Correspondence shall not be permitted between an individual and a victim of the individual, a registered sex offender, or another individual residing at the facility.

b. Correspondence an individual receives from the state ombudsman shall be delivered to the individual unopened. Other outgoing and incoming letters and packages shall not be censored or tampered with in any manner except that an employee may:

- (1) Open, but not read, incoming and outgoing letters and packages in the presence of the individual to whom the letters and packages belong; or
- (2) Require the individual to open the letters or packages in an employee's presence and disclose the contents.

c. In situations where the employee has reasonable suspicion that a letter or package contains information or materials that threaten the security or the therapeutic needs of the facility, such as but not limited to contraband, threats, escape plans, or sexually explicit content, the correspondence may be read in the presence of the individual.

d. Letters or packages found to contain contraband shall be confiscated. Both the sender and the intended receiver of the confiscated letters and packages shall be notified and given the reasons for the action in writing within two business days of the action.

e. The facility administrator or designee may terminate correspondence between an individual and another person when the individual's treatment team has determined that the correspondence is not in the individual's best interest, is detrimental to the individual's treatment plan, is a threat to public or individual safety, or is a threat to the security of the facility. Termination shall be based on the circumstances of each case.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) The facility administrator or designee shall provide justification to terminate the correspondence in a written notice to the correspondents.

(2) Correspondents may file a grievance concerning the termination.
This rule is intended to implement Iowa Code chapter 229A.

441—31.8(229A) Building and grounds. The facility's building and grounds shall not be available for general public use.

This rule is intended to implement Iowa Code chapter 229A.

441—31.9(8,218) Gifts and bequests. Gifts or bequests of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the facility administrator.

31.9(1) Evaluation. The facility administrator or designee shall evaluate the gift or bequest in terms of the nature of the contribution to the facility program.

31.9(2) Acceptance. The facility administrator shall be responsible for accepting the gift or bequest and reporting it to the division administrator.

a. All monetary gifts or bequests shall be acknowledged in writing to the donor.

b. All gifts or bequests, regardless of value, shall be reported to the Iowa ethics and campaign disclosure board within 20 days of receipt of the gift or bequest using the board's Form-GB.

This rule is intended to implement Iowa Code section 8.7.

441—31.10(229A) Cost of care. The facility shall seek to recover the full cost or a portion of the cost of care from the individual or another responsible person. The cost of the individual's care shall be determined for each fiscal year included in the length of stay using the average per diem cost multiplied by the total number of days of care.

31.10(1) Social security benefits. The facility shall seek recovery from the individual when the individual receives a benefit pursuant to the Social Security Act. In such case, the individual shall be allowed to retain for personal use an amount equal to the personal allowance amount established by the Social Security Administration.

31.10(2) Other income. The facility shall seek recovery from the individual when the individual has other income; a trust fund; individually owned real estate, stocks, bonds, savings account, checking account, or certificate of deposit; an individual retirement account; or proceeds from the disposal of real estate or other property.

31.10(3) Other person legally liable. The facility shall seek recovery from a person who is legally liable for the support of the individual up to the amount of the person's legal liability. The facility shall seek recovery from a person who is bound by contract to support the individual up to the amount of the contract. A person legally liable to support the individual shall not include a political subdivision.

This rule is intended to implement Iowa Code section 229A.12.

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1) "b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The proposed amendments update rules for the Medicaid home- and community-based services (HCBS) intellectual disability waiver to implement legislative directives and corrective actions from the Centers for Medicare and Medicaid Services (CMS) as follows:

- As directed by 2010 Iowa Acts, chapter 1031 (Senate File 2088), section 405, the amendments allow providers of supported community living services to include transportation costs to and from work and day services as reimbursable costs. Currently, these costs must be billed through a separate transportation service. This change may decrease administrative costs and increase the ability of providers to meet members' transportation needs.

- As directed by 2010 Iowa Acts, chapter 1031, section 404, the amendments change the frequency of psychological evaluations and re-evaluations of a member to determine eligibility for the waiver. For persons who have a diagnosis of moderate, severe or profound mental retardation, only one diagnosis made after the member reaches 18 years of age will be required as a condition of eligibility for waiver services after age 21. For persons with a diagnosis of mild or unspecified mental retardation, the frequency of redeterminations after age 21 will be extended to every six years (from the current five years).

- As directed by 2010 Iowa Acts, chapter 1192 (House File 2526), section 70, the amendments set the criteria and process for implementation of one statewide waiting list to ensure that all applicants have equal access to payment slots. Currently, separate waiting lists are maintained by each entity that funds the nonfederal share of waiver services (by counties for their adult residents and by the state for applicants without a county of legal settlement and for children). Each funding entity determines the need for a waiting list based on the entity's financial situation. Applicants receive a payment slot on a first-come, first-served basis as financial resources for the applicant's funding entity permit.

As part of the recertification of the intellectual disability waiver in 2009, CMS identified that persons applying for the waiver do not have equal access to a payment slot statewide. Applicants from one county may access services immediately, while applicants from another county may be on a waiting list for months or years. The Department agreed to correct this practice as a condition of renewal of the waiver. The proposed amendments provide for a statewide waiting list that is prioritized based on each applicant's need for waiver services. Criteria are specified for emergency needs and urgent needs. An applicant with an emergency or urgent need would have priority for a payment slot, regardless of where the applicant lives or the financial resources allocated by the county or state.

The proposed amendments also make technical changes to:

- Replace the previous waiver name, "mental retardation waiver" or "MR waiver," with the current name, "intellectual disability waiver."

- Remove the term "mental disability equivalent to mental retardation" from the diagnostic eligibility requirements of the intellectual disability waiver.

- Specify that only children in residential-based supported community living placement may have a diagnosis of a "related condition" and define that term.

- Update form names and numbers.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before May 24, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4; 2010 Iowa Acts, chapter 1031, sections 404 and 405; and 2010 Iowa Acts, chapter 1192, section 70.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subparagraph **78.41(1)“a”(5)** as follows:

(5) Transportation services are activities and expenditures designed to assist the member to travel from one place to another to obtain services or carry out life's activities. ~~The service excludes transportation to and from work.~~

ITEM 2. Amend paragraph **78.41(1)“e”** as follows:

e. ~~Transportation to and from a day program is not a reimbursable service.~~ Maintenance and room and board costs are not reimbursable.

ITEM 3. Strike “MR waiver” wherever it appears in **441—Chapter 83, Division IV heading**, rule **441—83.61(249A)**, paragraph **83.61(1)“h”** and rules **441—83.62(249A)**, **441—83.64(249A)**, **441—83.66(249A)**, **441—83.67(249A)** and **441—83.70(249A)** and insert “intellectual disability waiver” in lieu thereof.

ITEM 4. Amend rule **441—83.60(249A)**, definition of “Person with a related condition,” as follows:

~~“Person with a related~~ Related condition” means ~~an individual who has~~ a severe, chronic disability that meets all the following conditions:

1. It is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of a mentally retarded person and requires treatment or services similar to those required for a mentally retarded person.

2. It is manifested before the age of 22.

3. It is likely to continue indefinitely.

4. It results in substantial functional limitations in three or more of the following areas of major life activity:

- Self-care.
- Understanding and use of language.
- Learning.
- Mobility.
- Self-direction.
- Capacity for independent living.

ITEM 5. Amend paragraph **83.61(1)“a”** as follows:

a. Have a diagnosis of mental retardation or, for residential-based supported community living services only, be a person with a related condition as defined in rule 441—83.60(249A). ~~Those eligible based on a primary diagnosis of mental retardation must have the~~ The diagnosis shall be initially established and recertified as follows:

Age	Initial application to HCBS MR intellectual disability waiver program	Recertification for persons with an IQ range of 54 or below, moderate range of MR or below a <u>diagnosis of moderate, severe or profound mental retardation</u>	Recertification for persons with an IQ range of 55 or above, a <u>diagnosis of mild or unspecified range of MR mental retardation</u>
0 through 17 years	Psychological documentation within three years of the application date substantiating a diagnosis of mental retardation or mental disability equivalent to mental retardation <u>or, for residential-based supported community living services, a diagnosis of a related condition as defined in rule 441—83.60(249A)</u>	After the initial psychological evaluation which listed the consumer in this range, substantiate a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation <u>or, for residential-based supported community living services, a diagnosis of a related condition as defined in rule 441—83.60(249A)</u> every six years and when a significant change occurs	After the initial psychological evaluation which listed the consumer in this range, substantiate a diagnosis of mental retardation or mental disability equivalent to mental retardation <u>or, for residential-based supported community living services, a diagnosis of a related condition as defined in rule 441—83.60(249A)</u> every three years and when a significant change occurs

HUMAN SERVICES DEPARTMENT[441](cont'd)

Age	Initial application to HCBS MR intellectual disability waiver program	Recertification for persons with an IQ range of 54 or below, moderate range of MR or below a diagnosis of moderate, severe or profound mental retardation	Recertification for persons with an IQ range of 55 or above, a diagnosis of mild or unspecified range of MR mental retardation
18 through 21 years	<ul style="list-style-type: none"> Psychological documentation substantiating diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation within three years prior to age 18 before the application date, or Diagnosis of mental retardation or mental disability equivalent to mental retardation made before age 18 and current psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation 	Psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation every ten years and whenever a significant change occurs	Psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation every five years and whenever a significant change occurs
22 years and above	Diagnosis made before age 18 and current psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation , if the last testing date was (1) more than five years ago for consumers with an IQ range of 55 or above or an applicant with a diagnosis of mild or unspecified mental retardation, or (2) more than ten years ago for consumers with an IQ range of 54 or below or an applicant with a diagnosis of moderate, severe or profound MR or below mental retardation	Psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation every ten years and whenever a significant change occurs made since the member reached 18 years of age	Psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation every five six years and whenever a significant change occurs

ITEM 6. Amend paragraph **83.61(1)“j”** as follows:

j. Be assigned an HCBS ~~MR intellectual disability~~ payment slot pursuant to subrule 83.61(4).

ITEM 7. Amend subrule 83.61(2) as follows:

83.61(2) Need for services.

a. ~~Consumers~~ Applicants currently receiving Medicaid case management or services of a department-qualified mental retardation professional (QMRP) shall have the applicable coordinating staff and other interdisciplinary team members complete the ~~Functional Assessment Tool, Form 470-3073 470-4694, Case Management Comprehensive Assessment~~, and identify the ~~consumer's~~ applicant's needs and desires as well as the availability and appropriateness of the services.

b. ~~Consumers~~ Applicants not receiving services as set forth in paragraph **83.61(2)“a”** ~~who are applying for the HCBS MR waiver service~~ shall have a department service worker or a case manager paid by the county without Medicaid funds:

(1) ~~complete the Functional Assessment Tool, Complete Form 470-3073 470-4694, Case Management Comprehensive Assessment~~, for the initial level of care determination;

(2) ~~establish~~ Establish an initial interdisciplinary team for HCBS ~~MR intellectual disability~~ waiver services; and,

(3) ~~with~~ With the initial interdisciplinary team, identify the ~~consumer's~~ applicant's needs and desires as well as the availability and appropriateness of services.

c. ~~Persons~~ Applicants meeting other eligibility criteria who do not have a Medicaid case manager shall be referred to a Medicaid case manager.

d. and *e.* No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

f. The service worker, department QMRP, or Medicaid case manager shall complete the ~~Functional Assessment Tool, Form 470-3073~~ 470-4694, Case Management Comprehensive Assessment, for the initial level of care determination within 30 days from the date of the HCBS application unless the worker can document difficulty in locating information necessary for completion of Form ~~470-3073~~ 470-4694 or other circumstances beyond the worker's control.

g. At initial enrollment the service worker, department QMRP, case manager paid by the county without Medicaid funds, or Medicaid case manager shall establish an HCBS ~~MR~~ interdisciplinary team for each ~~consumer applicant~~ and, with the team, identify the ~~consumer's applicant's~~ need for service based on the ~~consumer's applicant's~~ needs and desires as well as the availability and appropriateness of services. The Medicaid case manager shall complete an annual review thereafter. The following criteria shall be used for the initial and ongoing assessments:

(1) The assessment shall be based, in part, on information on the completed ~~Functional Case Management Comprehensive Assessment Tool, Form 470-3073~~ 470-4694.

(2) to (4) No change.

h. No change.

ITEM 8. Amend subrule 83.61(3) as follows:

83.61(3) *HCBS MR intellectual disability waiver program limit.* The number of persons receiving HCBS ~~MR~~ intellectual disability waiver services in the state shall be limited to the number of payment slots provided in the HCBS ~~MR~~ intellectual disability waiver approved by the Centers for Medicare and Medicaid Services (CMS). The department shall make a request to CMS to adjust the program limit ~~annually to be effective each July 1 based upon the county management plans submitted by the state and counties as deemed necessary.~~ The department shall also submit a request to CMS for changes to the program limit to be effective January 1 if requested by a county during the month of September.

a. The payment slots are ~~on a county basis for adults with legal settlement in a county and are available~~ on a statewide basis ~~for children and adults without a county of legal settlement.~~ These slots shall be available ~~on a first-come, first-served basis~~ based on the prioritized need of an applicant pursuant to subrule 83.61(4).

b. No change.

ITEM 9. Amend subrule 83.61(4) as follows:

83.61(4) *Securing a payment slot.* The department shall determine if a payment slot is available for each applicant for the HCBS intellectual disability waiver.

a. ~~The county department office shall contact the bureau of long-term care for state cases and children or the central point of coordination administrator for the county of legal settlement for adults to determine if a payment slot is available for all new applications for the HCBS MR program. A payment slot shall be assigned to the applicant upon confirmation of an available slot.~~

(1) ~~For applicants not currently receiving Medicaid, the county department office shall contact the bureau or the county by the end of the fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.~~

(2) ~~For current Medicaid recipients, the county department office shall contact the bureau or the county by the end of the fifth working day after receipt of either Form 470-0659, Home and Community-Based Services Assessment or Reassessment, with the choice of HCBS waiver indicated by signature of the consumer or a written request signed and dated by the consumer.~~

(3) ~~A payment slot is assigned to the applicant upon confirmation of an available slot.~~

(4) (1) Once a payment slot is assigned, the ~~county department office~~ shall give written notice to the applicant.

(2) The department shall hold the payment slot for the applicant as long as reasonable efforts are being made to arrange services and the applicant has not been determined to be ineligible for the program. If services have not been initiated and reasonable efforts are no longer being made to arrange services, the slot shall revert for use by the next person on the waiting list, if applicable. The applicant originally assigned the slot must reapply for a new slot.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~b. If no payment slot is available, the bureau of long-term care shall enter persons on a waiting list according to the following:~~ applicant shall be placed on a statewide priority waiting list. The department shall assess each applicant to determine the applicant's priority need. The assessment shall be made for all applicants who are on a waiting list maintained by the state or a county on September 30, 2011, and for all new applications received on or after October 1, 2011.

~~(1) Consumers not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is date-stamped in the county department office or upon county department office receipt of disability determination, whichever is later.~~ Emergency need criteria are as follows:

1. The usual caregiver has died or is incapable of providing care, and no other caregivers are available to provide needed supports.

2. The applicant has lost primary residence or will be losing housing within 30 days and has no other housing options available.

3. The applicant is permanently living in a homeless shelter.

4. There is founded abuse or neglect by a caregiver or others living within the home of the applicant, and the applicant must move from the home.

5. The applicant cannot meet basic health and safety needs without immediate supports.

~~(2) Consumers currently eligible for Medicaid shall be added to the waiting list on the basis of the date the request as specified in 83.61(4) "a" (2) is date-stamped in the county department office.~~ Urgent need criteria are as follows:

1. The caregiver will need support within 60 days in order for the applicant to remain living in the current situation.

2. The caregiver will be unable to continue to provide care within the next 60 days.

3. The caregiver is 55 years of age or older and has a chronic or long-term physical or psychological condition that limits the ability to provide care.

4. The applicant is living in temporary housing and plans to move within 31 to 120 days.

5. The applicant is losing permanent housing and plans to move within 31 to 120 days.

6. The caregiver will be unable to be employed if services are not available.

7. There is a potential risk of abuse or neglect by a caregiver or others within the home of the applicant.

8. The applicant has behaviors that put the applicant at risk.

9. The applicant has behaviors that put others at risk.

10. The applicant is at risk of facility placement when needs could be met through community-based services.

~~(3) In the event that more than one application is received at one time, persons shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number. Applicants who meet an emergency need criterion shall be placed on the priority waiting list based on the total number of criteria in subparagraph 83.61(4) "b" (1) that are met. If applicants meet an equal number of criteria, the position on the waiting list shall be based on the date of application and the age of the applicant. The applicant who has been on the waiting list longer shall be placed higher on the waiting list. If the application date is the same, the older applicant shall be placed higher on the waiting list.~~

~~(4) Applicants who do not fall within the available slots shall have their application rejected, and their names shall be maintained on the waiting list. As slots become available, persons shall be selected from the waiting list to maintain the number of approved persons on the program based on their order on the waiting list. The county central point of coordination administrator (for adults) and the bureau of long-term care (for children and for adults with state case status) shall contact the county department office when a slot becomes available. meet an urgent need criterion shall be placed on the priority waiting list after applicants who meet emergency need criteria. The position on the waiting list shall be based on the total number of criteria in subparagraph 83.61(4) "b" (2) that are met. If applicants meet an equal number of criteria, the position on the waiting list shall be based on the date of application and the age of the applicant. The applicant who has been on the waiting list longer shall be placed higher on the waiting list. If the application date is the same, the older applicant shall be placed higher on the waiting list.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

(5) Applicants who do not meet emergency or urgent need criteria shall be placed lower on the waiting list than the applicants meeting urgent need criteria, based on the date of application. If the application date is the same, the older applicant shall be placed higher on the waiting list.

(6) Applicants shall remain on the waiting list until a payment slot has been assigned to them for use, they withdraw from the list, or they become ineligible for the waiver. If there is a change in an applicant's need, the applicant may contact the local department office and request that a new assessment be completed. The outcome of the assessment shall determine placement on the waiting list as directed in this subrule.

c. To maintain the approved number of members in the program, persons shall be selected from the waiting list as payment slots become available, based on their priority order on the waiting list.

(5) (1) Once a payment slot is assigned, the county department office shall give written notice to the person within five working days.

(2) The department shall hold the payment slot for 30 days for the person to file a new application. If an application has not been filed within 30 days, the slot shall revert for use by the next person on the waiting list, if applicable. The person originally assigned the slot must reapply for a new slot.

e. ~~The county department office shall notify the bureau of long-term care for state cases and children or the central point of coordination administrator for the county of legal settlement for adults within five working days of the receipt of an application and of any action on or withdrawal of an application.~~

ITEM 10. Amend paragraph **83.62(3)“c”** as follows:

c. An applicant shall be given the choice between HCBS waiver services and ICF/MR care. The case manager or worker shall have the consumer or legal representative complete and sign ~~Part A of Form 470-3073, Mental Retardation Functional Assessment Tool~~ 470-4694, Case Management Comprehensive Assessment, indicating the consumer's choice of care.

ITEM 11. Amend paragraph **83.68(1)“e”** as follows:

e. ~~The No HCBS MR intellectual disability waiver service is not identified in the applicant's service plan.~~

ITEM 12. Amend paragraph **83.68(3)“c”** as follows:

c. ~~The No HCBS MR intellectual disability waiver service is not identified in the consumer's member's annual service plan.~~

ITEM 13. Amend subrule 83.70(2) as follows:

83.70(2) *Continuation of waiver services for HCBS MR consumers.* The county shall continue to provide HCBS MR intellectual disability waiver services to ~~consumers~~ members with mental retardation who ~~are~~ were enrolled in the HCBS MR program on August 1, 1996. The county shall ~~continue to~~ provide HCBS MR intellectual disability waiver services to children who are enrolled in the HCBS MR program intellectual disability waiver after the children turn 18. The state slot for a child in the HCBS MR program intellectual disability waiver will transfer to the county of legal settlement when the child turns 18.

ITEM 14. Amend rule 441—83.72(249A) as follows:

441—83.72(249A) Rent subsidy program. ~~Recipients of~~ Members in the HCBS MR intellectual disability waiver program may be eligible for a rent subsidy program. See ~~441—Chapter 53 265—Chapter 24.~~

ITEM 15. Amend paragraph **83.102(1)“c”** as follows:

c. Be ineligible for the HCBS MR intellectual disability waiver.

ARC 9495B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 97, “Common Snipe, Virginia Rail and Sora, Woodcock and Ruffed Grouse Hunting Seasons,” Iowa Administrative Code.

The proposed amendments add mourning doves to the species covered in Chapter 97 and set the season dates, bag and possession limits, shooting hours, and areas open to hunting mourning doves.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 24, 2011. Written comments may be directed to Willie Suchy of the Wildlife Bureau at the Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; by E-mail at wildlife@dnr.iowa.gov; or by fax at (515)281-6794. Persons who wish to convey their comments orally may contact the Wildlife Bureau by telephone at (515)281-5034 or by visiting the fourth floor of the Wallace State Office Building during regular business hours.

There will be a public hearing on May 24, 2011, at 1 p.m. in the Auditorium on the second floor of the Wallace State Office Building, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and request specific accommodations.

The Department maintains that the new dove season will have a positive impact on jobs in Iowa. The U.S. Fish and Wildlife Service conducted a National Hunting and Fishing Survey in Iowa in 2006 and found that, on average, Iowa hunters spent \$104/day hunting upland game. Surveys conducted by Southwick & Associates in surrounding states show a range of 15,000 to 20,000 dove hunters, each of whom hunts doves an average of 3.3 days a year. These data, when transferred to Iowa, would show a potential economic impact of \$5.1 to \$6.8 million. Additionally, Southwick & Associates’ 2006 survey from surrounding states shows a trend of 1 job created for every 733 days of hunting. Again, these figures when transferred to Iowa would show a potential for 67.5 to 90 new jobs.

These amendments are intended to implement Iowa Code sections 481A.38 and 481A.39 and section 481A.48 as amended by 2011 Iowa Acts, Senate File 464.

The following amendments are proposed.

ITEM 1. Amend **571—Chapter 97**, title, as follows:

COMMON SNIPE, VIRGINIA RAIL AND SORA, WOODCOCK,
~~AND~~ RUFFED GROUSE, AND MOURNING DOVE HUNTING SEASONS

ITEM 2. Adopt the following new rule 571—97.6(481A):

571—97.6(481A) Mourning dove season. Open season for hunting mourning doves shall begin on September 1 and continue for 70 consecutive days. Shooting hours shall be from one-half hour before sunrise to sunset each day. Daily bag limit is 15; possession limit is 30. The entire state is open.

ARC 9486B**REAL ESTATE COMMISSION[193E]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 543B.9 and 543B.18, the Real Estate Commission hereby gives Notice of Intended Action to amend Chapter 5, “Licensees of Other Jurisdictions and Reciprocity,” Iowa Administrative Code.

The proposed amendment to rule 193E—5.11(543B) will require that a nonresident licensee notify the Commission within 15 days of an adverse action taken by another state or jurisdiction.

A public hearing will be held on May 24, 2011, at 9 a.m. in the Professional Licensing Conference Room, Second Floor, 1920 SE Hulsizer Road, Ankeny, Iowa, at which time persons may present their views on the proposed amendment either orally or in writing. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

Consideration will be given to all written suggestions or comments received by 4:30 p.m. on May 24, 2011. Comments should be addressed to David Batts, Executive Officer, Iowa Real Estate Commission, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; or faxed to (515)281-7411. E-mail may be sent to David.Batts@Iowa.gov.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code chapter 543B.

The following amendment is proposed.

Amend rule 193E—5.11(543B) as follows:

193E—5.11(543B) License discipline reporting required. If a nonresident Iowa licensee has a real estate license disciplined, suspended or revoked by any other state or jurisdiction, that disciplinary action will be considered prima facie evidence of violation of Iowa Code section 543B.29 or 543B.34 or both, and a hearing may be held to determine whether similar disciplinary action should be taken against the Iowa licensee. Failure to notify the commission within 15 days of an adverse action taken by another state or jurisdiction shall be cause for disciplinary action.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

May 1, 2010 — May 31, 2010	5.75%
June 1, 2010 — June 30, 2010	5.75%
July 1, 2010 — July 31, 2010	5.50%
August 1, 2010 — August 31, 2010	5.25%
September 1, 2010 — September 30, 2010	5.00%
October 1, 2010 — October 31, 2010	4.75%
November 1, 2010 — November 30, 2010	4.75%

USURY(cont'd)

December 1, 2010 — December 31, 2010	4.50%
January 1, 2011 — January 31, 2011	4.75%
February 1, 2011 — February 28, 2011	5.25%
March 1, 2011 — March 31, 2011	5.50%
April 1, 2011 — April 30, 2011	5.50%
May 1, 2011 — May 31, 2011	5.50%

ARC 9492B**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 35A.3(2), the Commission of Veterans Affairs hereby gives Notice of Intended Action to amend Chapter 10, “Iowa Veterans Home,” Iowa Administrative Code.

The intent of the proposed amendments is to reflect changes as a result of legislation signed by President Obama that modified the eligibility of Gold Star parents for admission to state veterans homes. Previously, Gold Star parents could be admitted only if all of their children died while serving in the armed forces. The change allows a Gold Star parent admission to a state veterans home if the parent has lost at least one child in active military service. The other changes reflect clarification of the support billing process at the Iowa Veterans Home.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 24, 2011. Such written materials should be directed to Doug Freeman, Director of Admissions, Iowa Veterans Home, 1301 Summit, Marshalltown, Iowa 50158-5485; or faxed to (641)753-4278. E-mail may be sent to doug.freeman@ivh.state.ia.us. Persons who wish to convey their views orally should contact the Commandant’s office at (641)753-4309 at the Iowa Veterans Home.

If requested in writing, a public hearing on the proposed amendments will be held on Wednesday, May 25, 2011, at 10 a.m. in the Ford Memorial Conference Room at the Iowa Veterans Home, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record. Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Iowa Veterans Home to advise of specific needs. If no written or oral requests for a public hearing are received prior to the public hearing, the public hearing will be canceled without further notice.

These proposed amendments are not subject to waiver.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 35D.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **801—10.1(35D)**:

“*Gold Star parent*” means a parent whose child died while serving in the armed forces of the United States.

“*Therapeutic activity*” means an activity that is considered as treatment. A therapist shall determine that a particular activity is beneficial to the well-being of a resident and shall include this determination in the resident’s plan of care.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 2. Amend rule 801—10.2(35D), introductory paragraph, as follows:

801—10.2(35D) Eligibility requirements. Veterans, ~~and~~ spouses of veterans, and Gold Star parents shall be eligible for admission to IVH in accordance with the following:

ITEM 3. Amend paragraph **10.2(1)“b”** as follows:

b. The individual cannot be competitively employed on the day of admission or throughout the individual's residency.

ITEM 4. Amend paragraph **10.2(2)“d”** as follows:

d. Spouses, ~~and~~ surviving spouses and Gold Star parents admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

ITEM 5. Renumber subrule **10.2(3)** as **10.2(4)**.

ITEM 6. Adopt the following new subrule 10.2(3):

10.2(3) A Gold Star parent shall be eligible for admittance in accordance with the following conditions:

a. The parent's child died while serving in the armed forces of the United States.

b. The individual does not have sufficient means for the individual's support, or the individual is disabled by reason of disease, wounds, old age or otherwise and is in need of one of the multilevels of care available at IVH and is unable to defray the expenses of the necessary care, except as described at paragraph “e.”

c. The individual cannot be competitively employed on the day of admission or throughout the individual's residency.

d. The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

e. An individual who has sufficient means for the individual's own care but who is otherwise eligible to become a member of IVH may, if there is room for individuals described in paragraph “b” above, be admitted and allowed to remain at IVH upon payment of the cost of the individual's care in accordance with rules 801—10.14(35D) to 801—10.23(35D).

f. An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

g. Gold Star parents, spouses and surviving spouses admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

ITEM 7. Amend subrule 10.3(2) as follows:

10.3(2) Application shall be made on the “Veteran Application for Admission to the Iowa Veterans Home,” Form 475-0409, ~~or on the~~ “Spouse's Application for Admission to the Iowa Veterans Home,” Form 475-0410, or the “Gold Star Parent Application for Admission to the Iowa Veterans Home,” Form 475-0411. Separate ~~application~~ applications shall be required for an eligible veteran and the spouse of the veteran when both veteran and spouse are applying for admission. The applications may be obtained at:

a. The county commission of veterans affairs' office.

b. DVA medical centers located in or serving veterans in the state of Iowa.

c. IVH.

ITEM 8. Reletter paragraphs **10.3(4)“d”** to **“h”** as **10.3(4)“e”** to **“i.”**

ITEM 9. Adopt the following new paragraph **10.3(4)“d”**:

d. If the applicant is a Gold Star parent, an original or certified copy of the veteran's birth certificate and certification of the child's death while serving in the armed forces of the United States.

ITEM 10. Amend subrule 10.11(1) as follows:

10.11(1) Member rights shall be in accordance with those listed in 481—Chapter 57 for members residing in the residential care facility level of care, those listed in 481—Chapter ~~59~~ 58 for members

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

residing in the nursing facility level of care, and those noted in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, pertaining to residents of state veterans homes.

ITEM 11. Amend subparagraphs **10.16(2)“a”(7)** and **(10)** as follows:

(7) Assets of Native Americans belonging to certain tribes arising from judgment fund and payments from certain land and subsurface mineral rights. This does not include per capita payments from casino proceeds.

(10) An amount that is irrevocable and separately identifiable, having a principal amount not in excess of \$8514 principal a predetermined amount set by the department of human services, without an itemized billing, for the member or spouse to meet the burial and related expenses of that person.

ITEM 12. Amend paragraphs **10.16(2)“c”** and **“d”** as follows:

c. *Assets of a married member with spouse in a care facility.* If a member's spouse is residing in a nursing facility, ~~including IVH~~, the member shall be treated as a single member for asset determination purposes. If the member and the spouse become members of IVH on the same day, all resources of both members shall be added together and split one-half to each member for asset determination purposes. If the spouse is residing in a residential care facility, the rules pertaining to a spouse living in the community apply.

d. *Assets of a married member with spouse living in the community.* When liquid assets not exempted in paragraph “a” above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.

The assets attributed to the member shall be determined from the documented assets of both the member and spouse living in the community as of the first day of admission to IVH. All resources of both the member and the spouse shall be added together. If the total resources are less than \$24,000 (the amount set by 441 IAC 75.5(3)“d” and “f,” Public Law 100-365 and Public Law 100-485), then that amount shall be protected for the spouse living in the community. If applicable, the next \$24,000 shall be awarded to the member. Any resources over \$48,000 shall be split one-half to the member and one-half to the spouse up to a predetermined amount set by the department of human services. All resources over the predetermined amount shall be awarded to the member unless it is determined that the member would never be eligible for Medicaid benefits; in this circumstance, assets will be split one-half to the member and one-half to the spouse. Other resources attributed to the spouse living in the community shall be determined by the department of human services through the attribution process.

(1) to (3) No change.

ITEM 13. Amend subparagraphs **10.19(2)“a”(8)** and **(16)** as follows:

(8) Any money received by a member from the sale of items ~~constructed or grown at IVH as part of a therapy program~~ resulting from a therapeutic activity.

(16) Income from participating as outlined in the community reentry program (IVH policy #265A 174) or the IVH discharge planning policy (IVH policy #265).

ITEM 14. Amend paragraph **10.19(2)“b”** as follows:

b. Personal needs allowance. All members shall have a an amount exempted from their monthly income intended to cover the purchase of clothing and incidentals.

(1) and (2) No change.

ITEM 15. Amend subrule 10.20(10) as follows:

10.20(10) Through IVH programs, employment is only allowed in the community reentry program (IVH policy #265A 174) or the IVH discharge planning policy (IVH policy #265).

ITEM 16. Amend subrule 10.35(7) as follows:

10.35(7) Upon the death of a member with personal funds deposited with IVH, IVH will first take payment for the final support bill. If funds remain, IVH must will convey promptly the member's funds to any outstanding funeral home bill, the individual paying last funeral expenses, or whoever is administering the member's estate. If probate papers are produced, a final accounting of those funds

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

must also be provided to the individual administering the member's estate. If the value of the member's estate is so small as to make the granting of administration inadvisable, IVH must hold, then deliver all money plus interest within one year to the proper heirs equally or adhere to the member's request in the member's last will and testament.

ITEM 17. Amend subrule 10.56(3) as follows:

10.56(3) Pets are not allowed inside the cottages ~~without prior authorization~~. Visitors who bring pets must comply with IVH rules regarding pet health and safety. ~~Visitors may maintain~~ Visiting pets will be housed in a portable pet kennels kennel outside the cottage and kept on a leash while on the IVH grounds. The kennel shall be provided by the pet owner.

ARC 9483B

ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby amends Chapter 1, "Definitions," Iowa Administrative Code.

As part of the Auditing Standards Board's Clarity Project, guidance on the examination of financial controls at a service organization previously contained in Statement on Auditing Standard (SAS) No. 70 has been replaced by Statement on Standards for Attestation Engagements (SSAE) No. 16. SSAE No. 16 was released in April 2010 and is effective for service auditors' reports for periods ending on or after June 15, 2011. The Auditing Standards Board has characterized the change as a carefully considered step in reorganizing standards for clarity and convergence with international standards and utility.

In Iowa, this change has the unintended effect of reclassifying service audits (of such entities as investment advisors and data centers) from "attest" services that must be performed by a certified public accountant (CPA) within a CPA firm to nonattest services that may be performed by anyone. Service audits are crucial services and should be performed by licensed professionals guided by the highest standards of professional ethics and competence. Public protection could be substantially weakened in Iowa if the Board does not take steps to ensure that service audits, including the reporting on internal controls of service organizations, continue to be treated as attest services.

The unintended effect will occur in Iowa based on the wording of Iowa Code section 542.3(1)"a"(1) and (3). Currently, service audits are completed in accordance with SAS No. 70, as provided in Iowa Code section 542.3(1)"a"(1). The Auditing Standards Board change will move service audits so that they will be completed in accordance with SSAE No. 16, which is the standard applicable in Iowa Code section 542.3(1)"a"(3). Iowa Code section 542.3(1)"a"(3), however, refers to "prospective" financial information. Service audits on the internal controls of service organizations focus on existing and prior information, not "prospective" information. Now that this issue has been brought to the Board's attention, the Board may take steps to address the issue. The Board accordingly views this emergency rule making as a temporary measure to ensure the public is protected. In the longer term, the Board may pursue legislation to ensure Iowa CPAs and service organizations are subject to the same standards as will be applicable across the nation.

Pursuant to Iowa Code section 17A.4(3), the Accountancy Examining Board finds that notice and public participation are unnecessary because this change has the unintended effect of lessening public protection and endangering mobility by omitting certain important services related to auditing from the definition of "attest" as defined by Iowa law.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Accountancy Examining Board further finds that the clarification provided by this amendment confers a benefit and that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective June 1, 2011. As the changes are effective for service auditors' reports for periods ending on or after June 15, 2011, it is necessary that this amendment be effective prior to that date.

This amendment is also published herein under Notice of Intended Action as **ARC 9484B** to allow for public comment.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

This amendment will become effective June 1, 2011.

The following amendment is adopted.

Amend rule **193A—1.1(542)**, definition of "Attest," as follows:

"Attest" or "attest service" means providing any of the following services:

1. An audit or other engagement to be performed in accordance with the statements on auditing standards.

2. A review of a financial statement to be performed in accordance with the statements on standards for accounting and review services.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

3. An examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements.
4. Any engagement to be performed in accordance with the auditing standards of the PCAOB.
5. Any audit or other engagement regarding service organizations and service audits that as of April 7, 2011, would be performed in accordance with the statement on auditing standards and, in particular, SAS No. 70, shall continue to be performed in accordance with the statements on auditing standards in effect on April 7, 2011, and shall not be guided by the statements on standards for attestation engagements and in particular SSAE No. 16.

The standards specified in the definition of “attest” are those standards adopted by the board, by rule, by reference to the standards developed for general application by the AICPA, the PCAOB, or other recognized national accountancy organization.

[Filed Emergency 4/7/11, effective 6/1/11]

[Published 5/4/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.

ARC 9489B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services rescinds Chapter 155, “Child Abuse Prevention Program,” Iowa Administrative Code, and adopts a new Chapter 155 with the same title.

Child abuse prevention services are provided at the local level through community-based child abuse prevention projects. Program funds are administered by an entity under contract with the Department. The current administrative services contract for this program will expire June 30, 2011. The Department has issued a request for proposals (RFP ACFS-11-125) for a single statewide performance-based administrative services contract for state fiscal year 2012. Proposals for the administration contract are due to the Department by May 9, 2011.

Chapter 155 previously dictated the procurement process in a way that did not align with current state rules regarding the purchase of services. The narrowly defined procedures limited the Department’s ability to purchase needed services and to come into compliance with new requirements enacted in the Child Abuse Prevention and Treatment Act, Public Law 111-320.

The new Chapter 155 updates the rules with a more generalized description of the program which allows the Department to guide the program’s direction through the RFP and contracting process. Annual goals will be set for the program by the Child Abuse Prevention Program Advisory Committee and be implemented through the request for grant proposals. Setting detailed program objectives and processes through the requests for proposals and contracts will allow the Department to implement program changes as required by the federal government without the need for rule changes.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on February 9, 2011, as **ARC 9348B**. The Department received two comments on the Notice of Intended Action.

One comment urged funding for Parents Anonymous®. These rules are intended to specify the procurement process, not to require specific projects. Each community council or coalition makes funding requests to the administrator for the projects the council feels are needed to prevent child abuse in the council’s community. The Department is preparing a request for these proposals.

One comment questioned the need to issue a new request for proposals annually. The Department’s intention is to enter into a one-year contract for program administration that can be extended at the Department’s discretion for five one-year increments. To clarify the policy, the Department has combined proposed rules 441—155.2(235A), 441—155.3(235A), and 441—155.4(235A) into

HUMAN SERVICES DEPARTMENT[441](cont'd)

one rule that addresses the contract for program administration and has renumbered proposed rule 441—155.5(235A) as 441—155.3(235A).

These rules do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on April 13, 2011.

The Department finds that this amendment confers a benefit on applicants for the child abuse prevention contract by eliminating conflicts between the current rules and the requirements of the request for proposals for contract administration. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code sections 235A.1 and 235A.2.

This amendment became effective on April 15, 2011.

The following amendment is adopted.

Rescind 441—Chapter 155 and adopt the following new chapter in lieu thereof:

CHAPTER 155
CHILD ABUSE PREVENTION PROGRAM

PREAMBLE

These rules define and structure the child abuse prevention program. Services are provided through a single statewide performance-based contract for the administration of funds to be used at the local level for community-based child abuse prevention projects.

441—155.1(235A) Definitions.

“*Advisory committee*” or “*committee*” means the child abuse prevention program advisory committee authorized by Iowa Code section 217.3A.

“*Child abuse prevention program*” or “*program*” means the program established by Iowa Code section 235A.1. Use of either term in the context of this chapter refers to the program as a whole rather than individual projects funded under the program.

“*Community-based volunteer coalition or council*” or “*community council*” means that group of persons who, by consensus of a community's human service providers, represent that community's interests in the area of prevention of child abuse and neglect and who serve in that representational capacity without compensation. The consensus of the community's human service providers may be demonstrated through letters of support or similar documentation.

“*Contractor*” means the single agency or organization with which the department contracts for the administration of child abuse prevention program funds.

“*Department*” means the Iowa department of human services.

“*Director*” means the director of the department of human services.

“*Fiscal year*” means the 12-month period for which child abuse prevention program funds are appropriated.

“*Grant project*” means a project funded under the child abuse prevention program as awarded by the contractor.

441—155.2(235A) Contract for program administration. The department shall contract for the administration of the child abuse prevention program through formal competitive procurement conducted according to the requirements of 11—Chapters 106 and 107.

155.2(1) Eligibility requirements. Eligibility for the program administration contract is limited to statewide agencies or organizations that make maximum use of voluntary administrative services.

155.2(2) Duties. The department shall contract with a single agency or organization to:

a. Administer the appropriated funds and any grants, gifts or bequests to the department that are specifically designated by their source for use in the child abuse prevention program; and

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Study and evaluate community-based prevention projects and educational programs for the problems of families and children in accordance with the provisions of Iowa Code section 235A.1 and this chapter.

441—155.3(235A) Awarding of grants. In any year in which funding is appropriated or otherwise made available for the child abuse prevention program, the contractor shall solicit grant project proposals. Funds for the grant projects shall be applied for and received by community-based volunteer coalitions or councils. Grant projects may be awarded to fund the establishment or expansion of community-based prevention projects or educational programs for the prevention of child abuse and neglect.

155.3(1) The advisory committee shall establish specific program goals for each fiscal year in which program funds are appropriated. These program goals shall address the current and emerging needs of children and families throughout the state.

155.3(2) The contractor shall widely disseminate a request for grant project proposals consistent with all state and federal procurement requirements. The request for grant project proposals shall fully describe the child abuse prevention program goals and the procedures for applying for and receiving program funds, as agreed upon in the administration contract.

155.3(3) All grant project proposals shall be reviewed by the contractor, who shall consult with the advisory committee on grant project selection. The committee shall advise the department as to the contractor's compliance with the established program goals.

These rules are intended to implement Iowa Code sections 235A.1 and 235A.2.

[Filed Emergency After Notice 4/13/11, effective 4/15/11]

[Published 5/4/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.

ARC 9499B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r,” the Iowa Finance Authority hereby rescinds Chapter 25, “Entrepreneurs with Disabilities Program,” Iowa Administrative Code.

The purpose of this amendment is to rescind Chapter 25 due to the fact that administration of the Entrepreneurs with Disabilities Program has been transferred from the Iowa Finance Authority to the Iowa Vocational Rehabilitation Services Division of the Department of Education, and the Department of Education has adopted new rules for the program set forth in 281—Chapter 56, Division X, Iowa Administrative Code.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that the existence of both chapters is confusing and potentially contradictory.

The Authority finds that this amendment confers a benefit on the persons affected, namely persons with disabilities, in that the rescission of the duplicative chapter will provide clarity, avoid confusion, and ease and speed the administration of assistance benefiting those parties and should be implemented as soon as feasible in order to facilitate assistance to such persons with disabilities. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

The Authority adopted this amendment on April 6, 2011.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement 2008 Iowa Acts, chapter 1007.

This amendment became effective April 15, 2011.

The following amendment is adopted.

IOWA FINANCE AUTHORITY[265](cont'd)

Rescind and reserve **265—Chapter 25.**

[Filed Emergency 4/15/11, effective 4/15/11]

[Published 5/4/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.

ARC 9482B

ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby amends Chapter 1, “Definitions,” Chapter 3, “Certification of CPAs,” Chapter 5, “Licensure Status and Renewal of Certificates and Licenses,” and Chapter 7, “Certified Public Accounting Firms,” Iowa Administrative Code.

The amendment to Chapter 1 adds new definitions for “IFRS” (International Financial Reporting Standards) since the U.S. Securities and Exchange Commission is continuing its movement toward replacing GAAP (generally accepted accounting principles) with IFRS; “IASB” (International Accounting Standards Board), which is the board charged with writing and implementing IFRS; and “ALD” (Accountancy Licensing Database), which is a resource provided by the National Association of State Boards of Accountancy (NASBA) for accounting licensee searches.

The amendments to Chapter 3 rescind subrules 3.6(1) and 3.6(3) as these subrules are no longer necessary because of the computerized CPA examination; add the phrase “or on the board’s Web site” to subrule 3.14(1) to be consistent with other subrules and to direct users to where forms and resources may be found; update the cross reference in subrule 3.14(2) to correspond to the correct rule in rewritten Chapter 10, which became effective January 1, 2011; and update the cross reference in subrule 3.15(2) to correspond to the correct subrule in rewritten Chapter 13, which became effective January 1, 2011.

The amendments to Chapter 5 add a reference to NASBA’s ALD in subrule 5.1(6), which currently states that there is not a national licensee database; rescind rule 193A—5.2(542) because the license renewal period for June 30, 2010, has passed; and update the cross reference in paragraph 5.6(3)“c” to correspond to the correct subrule in rewritten Chapter 10.

The amendment to Chapter 7 adds the phrase “including a list of Iowa clients and the services performed” to subrule 7.6(3) to be consistent with the reinstatement application.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9370B** on February 23, 2011. No comments were received.

Two nonsubstantive changes have been made since the Notice. New Item 4 has been added to amend the introductory paragraph of renumbered subrule 3.6(1) by removing a now-obsolete cross reference to subrule 3.6(3), which is rescinded in Item 5. New Item 10 has been added to amend paragraphs 5.1(1)“a” and “b” by striking references to rule 193A—5.2(542), which is rescinded in Item 12.

These amendments are intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

These amendments will become effective June 8, 2011.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions of “ALD,” “IASB” and “IFRS” in rule **193A—1.1(542)**:

“*ALD*” means Accountancy Licensing Database.

“*IASB*” means International Accounting Standards Board.

“*IFRS*” means International Financial Reporting Standards.

ITEM 2. Rescind subrule **3.6(1)**.

ITEM 3. Renumber subrule **3.6(2)** as **3.6(1)**.

ITEM 4. Amend renumbered subrule **3.6(1)**, introductory paragraph, as follows:

3.6(1) Effective with the implementation of the computer-based examination, a candidate may take the required test subjects individually and in any order. Except as provided in ~~subrule 3.6(3)~~ and rule 193A—3.7(542), credit for any subjects passed shall be valid for 18 months from the actual date the candidate sat for the subject, without the candidate’s having to attain a minimum score on any failed subject(s) and without regard to whether the candidate sat for any other subjects. The candidate shall also be subject to the following:

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

ITEM 5. Rescind subrule **3.6(3)**.

ITEM 6. Renumber subrule **3.6(4)** as **3.6(2)**.

ITEM 7. Amend subrule 3.14(1) as follows:

3.14(1) A candidate who successfully passes the examination, completes the ethics course and examination and meets all of the requirements outlined in rule 193A—3.1(542) shall make application for the certificate on a form which may be obtained from the board office or on the board's Web site. An applicant for a certificate may be denied the certificate for reasons outlined in subrule 3.4(3), 3.4(4), or 3.4(5) regardless of when the incident occurred.

ITEM 8. Amend subrule 3.14(2) as follows:

3.14(2) A candidate who meets the requirements for a certificate outlined in rule 193A—3.1(542) shall file an application for a certificate within three years of the date of passing the examination. If the candidate does not file an application for a certificate within the required time frame, the candidate must comply with the basic continuing education requirements outlined in ~~193A—10.3(542)~~ rule 193A—10.5(542) prior to filing an application. The required continuing education hours shall include a minimum of ~~seven~~ eight hours of continuing education every three years devoted to financial statement presentation, such as courses covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates.

ITEM 9. Amend subrule 3.15(2) as follows:

3.15(2) Rules regarding the use of the title “CPA” in a firm name are found at 193A—subrule ~~13.6(5)~~ 13.4(14).

ITEM 10. Amend paragraphs **5.1(1)“a”** and **“b”** as follows:

a. An initial license is issued in active status with an expiration date. Maintaining active status requires periodic renewal as provided in ~~rules 193A—5.2(542) and rule 193A—5.3(542)~~. Renewal in active status requires satisfaction of continuing education as provided in 193A—Chapter 10.

b. A license may be renewed in inactive status as provided in rule 193A—5.9(272C,542) if the licensee does not satisfy the continuing education required for renewal in active status. A renewal license issued in inactive status shall lapse if not timely renewed pursuant to rule 193A—~~5.2(542) or 5.3(542)~~. An inactive license may be reinstated to active status at any time pursuant to subrule 5.9(7).

ITEM 11. Amend subrule 5.1(6) as follows:

5.1(6) Exercising a practice privilege in Iowa or for a client with a home office in Iowa while holding an inactive or lapsed Iowa CPA certificate places a special burden on the individual to ensure that the public is informed about the individual's licensure status in Iowa and in the jurisdiction of active licensure, as provided in 193A—paragraphs 20.8(2) “b” and 20.8(3) “b.” As a practical matter, an individual's failure to clarify licensure status in Iowa and in the jurisdiction of the individual's principal place of business may confuse the public. ~~There is no~~ However, the public may consult ALD, a comprehensive national data bank, that the public may consult to verify an individual's licensure in another jurisdiction, and a. ALD may be accessed at www.NASBA.org. A client contacting the board or consulting the board's Web site will be informed that the individual is not actively licensed in Iowa of the individual's licensure status in Iowa and in the individual's jurisdiction of active licensure. The board will have no record of an individual's exercise or purported exercise of a practice privilege.

ITEM 12. Rescind and reserve rule **193A—5.2(542)**.

ITEM 13. Amend paragraph **5.6(3)“c”** as follows:

c. Providing evidence of completed continuing education outlined in rule ~~193A—10.3(542)~~ 193A—10.5(542), if the licensee wishes to reinstate to active status; and

ITEM 14. Amend subrule 7.6(3) as follows:

7.6(3) The board may reinstate the permit upon payment of the proper renewal fee and a penalty as provided in rule 193A—12.1(542). The board shall also require a written statement outlining the

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

firm's professional activities during the period of lapsed licensure, including a list of Iowa clients and the services performed.

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ARC 9485B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104, 15.106 and 15E.18(3), the Iowa Department of Economic Development hereby adopts Chapter 77, "Site Development Program," Iowa Administrative Code.

This chapter implements a new site development program to increase the availability and expedite the development of sites in Iowa that may be suitable for achieving the state's economic development objectives, specifically regarding the availability and development of potential commercial and industrial sites. The Legislature appropriated \$175,000 for the program via 2010 Iowa Acts, chapter 1184, section 37.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 1, 2010, as **ARC 9255B**. The Department held a public hearing on Tuesday, December 21, 2010, to receive comments on these rules. A representative from the Franklin County Economic Development Group commented that minimum size should not be included in the provisions regarding an eligible application. Additionally, the Department held a process improvement event and discussed amending the provisions regarding an eligible applicant. In response, the initial minimum-size criterion included in the rules published under Notice of Intended Action has not been adopted. Finally, the catchwords for subrule 77.13(2) and a reference in subrule 77.14(1) have been changed from "additional criteria" to "additional considerations," and the word "may" was changed to "will" in the introductory paragraph of subrule 77.13(1) for accuracy.

The Iowa Economic Development Board adopted these rules on March 17, 2011.

These rules will become effective on June 8, 2011.

These rules are intended to implement Iowa Code section 15E.18 and 2010 Iowa Acts, chapter 1184, section 37.

The following amendment is adopted.

Adopt the following new 261—Chapter 77:

CHAPTER 77
SITE DEVELOPMENT PROGRAM

DIVISION I
GENERAL PROVISIONS

261—77.1(15E) Purposes. The purposes of the site development program are to establish an inventory of sites in Iowa that may be suitable for development or redevelopment and to provide consultation to local governments about site development techniques.

261—77.2(15E) Authority. The authority for establishing this program is provided in Iowa Code section 15E.18 and 2010 Iowa Acts, chapter 1184, section 37.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

261—77.3(15E) Definitions.

“Applicant” means the entity that submits an application to the department for a certificate of readiness for a site development area or areas.

“Certificate of readiness” means a certificate issued to a local government or local economic development official for a site that is determined to be ready for development or redevelopment based on criteria set forth in rule 261—77.13(15E).

“Department” means the Iowa department of economic development.

“Site development area” means property that is included as part of a site development plan and that is to be used or proposed to be used for development or redevelopment.

“Site development techniques” means environmental evaluations, property and wetland delineation, and historical evaluations.

261—77.4 to 77.10 Reserved.DIVISION II
CERTIFICATE OF READINESS

261—77.11(15E) Eligibility. Eligible applicants may apply to the department for a certificate of readiness which verifies that a particular site is ready for development or redevelopment. Eligible applicants include local governments or local economic development officials.

261—77.12(15E) Application; review; approval.

77.12(1) Application. All requests for a certificate of readiness for a site development area shall be made using the application provided by the department. The application shall include at least the following information:

- a. Applicant information, including name, address, telephone number and contact person.
- b. Legal description of the site development area(s).
- c. Identification of the property owner(s) related to the site development area(s).
- d. Detailed site development plan(s) for the site development area(s).

77.12(2) Review. The department will review each complete application in the order the applications are received and based on the general criteria described in subrule 77.13(1). The department will evaluate each application to identify any barriers to development or redevelopment.

77.12(3) Approval. The department may approve, deny or defer applications for a certificate of readiness. If the department approves an application for a certificate of readiness, the department will issue a certificate of readiness in accordance with rule 261—77.14(15E).

261—77.13(15E) Evaluation criteria.

77.13(1) General. When evaluating applications for certificates of readiness, the department will consider the following criteria:

- a. The thoroughness and detail of the site development plan.
- b. The site development plan's regard for compliance with applicable regulations, including without limitation land-use and zoning restrictions or environmental or cultural protections.
- c. The presence of viable transportation infrastructure.
- d. The presence of viable utility infrastructure.
- e. The presence of viable vertical infrastructure, as defined in Iowa Code section 8.57, which includes existing land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails.
- f. The geologic and natural characteristics of the site development area(s) including the proximity or inclusion of any floodplains.
- g. The ownership and control of the site development area(s).
- h. Demonstrated support, including without limitation financial and local support, for the site development plan.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

77.13(2) Additional considerations. In addition to the general criteria described above, the department will consider the following:

a. The site development plan for the site development area utilizes smart planning principles, as identified by the smart planning task force created by 2010 Iowa Acts, chapter 1184, section 25.

b. The site development plan for the site development area utilizes sustainable design and practices.

(1) For purposes of these rules, sustainable practices include those practices in accordance with the department's Iowa green streets criteria, which are available on the department's Web site.

(2) For purposes of these rules, sustainable design, as defined in rule 261—65.2(15), means construction design intended to minimize negative environmental impacts and to promote the health and comfort of building occupants, including, but not limited to, measures to reduce consumption of nonrenewable resources, minimize waste, and create healthy, productive environments. Sustainable design standards are also known as green building standards pursuant to Iowa Code section 103A.8B.

261—77.14(15E) Certificate of readiness.

77.14(1) Certification. Upon approval of an application for a certificate of readiness, the department will issue a certificate of readiness to the applicant. The certificate of readiness will include a short description of how the site development plan meets the general criteria described in subrule 77.13(1) and will include whether the site development plan meets the additional considerations described in subrule 77.13(2) and a short discussion related thereto, if applicable. The certificate of readiness will be valid for the term described on the certificate, which may vary for each site development area depending on the nature of the development and the site characteristics. In no event shall the term of a certificate exceed ten years.

77.14(2) Recertification. The department shall not recertify site development areas for which a certificate of readiness has expired or will expire. The local government or local economic development official responsible for the site development area shall reapply for a certificate of readiness under these rules for the site to be considered for a subsequent certificate of readiness.

261—77.15 to 77.20 Reserved.

DIVISION III
CONSULTATION

261—77.21(15E) Consultation.

77.21(1) The department shall consult with local governments and local economic development officials in regard to site development techniques. The department may contract with third parties to provide site development consultations regarding site development techniques directly to local governments and local economic development officials.

77.21(2) The department may charge a reasonable fee for consultation. A local government or local economic development official seeking assistance under subrule 77.21(1) shall make a request to the department and provide information requested by the department for use in formulating a fee estimate and work plan. Before any work is undertaken, the department shall provide a fee estimate to the interested local government or local economic development official and a description of the services that will be provided. The fee shall be reasonable and shall cover the department's costs of providing the service. The department may require the local government or local economic development official to enter into a contract that identifies the services to be performed and obligates the local government or local economic development official to pay the fee to the department or a third-party consultant for satisfactory completion of services.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

77.21(3) Applicants are not required to seek consultation under the program to be eligible to apply for a certificate of readiness and may seek consultation from the department at any time.

These rules are intended to implement Iowa Code section 15E.18 and 2010 Iowa Acts, chapter 1184, section 37.

[Filed 4/11/11, effective 6/8/11]

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ARC 9487B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 88, "Managed Health Care Providers," Iowa Administrative Code.

These amendments implement part of the plan developed by the remedial services transition committee to change remedial services from a fee-for-service program administered by the Iowa Medicaid Enterprise to a service administered by the Iowa Plan for Behavioral Health. (The Iowa Plan for Behavioral Health is a managed care program under contract to Iowa Medicaid.) The work of the remedial services transition committee was directed by 2010 Iowa Acts, chapter 1192, section 31. The transition committee filed a final report with the General Assembly on December 31, 2010.

These amendments:

- Rename Medicaid remedial services as "behavioral health intervention." Behavioral health intervention consists of skill-building services to assist a member who is diagnosed with an Axis I disorder to better manage the member's behavior and symptoms. (Axis I refers to clinical mental disorders, including major mental disorders and learning disorders, but excluding personality disorders and mental retardation.)
- Require the Iowa Plan for Behavioral Health to cover behavioral health intervention for members who are enrolled in the Iowa Plan. Behavioral health intervention will be covered under the fee-for-service program only for members who are not enrolled in the Iowa Plan when the services are provided. This change promotes consistency of coverage and better integration of services for members who move in and out of Iowa Plan enrollment.
- Require that providers be enrolled in the Iowa Plan for Behavioral Health in order to receive Medicaid fee-for-service payment for behavioral health intervention. This change provides a consistent basis for provider qualifications and access to Iowa Plan quality improvement and program integrity initiatives.
- Remove community psychiatric supportive treatment and rehabilitation program as covered services. Community psychiatric supportive treatment has historically not been provided. The definition of "rehabilitation program" is virtually identical to the definition of "skill training and development," which remains a covered service for adults.
- Add family training as a covered behavioral health intervention service for members under the age of 21. Family training teaches family members how to identify and use strategies to reduce problem behaviors and reinforce the appropriate skills to support the child's functioning in the home and community.
- Require that the recommendation for behavioral health intervention be part of a comprehensive treatment plan which also includes other behavioral health services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Make all behavioral health intervention services subject to telephone authorization by the Iowa Plan for Behavioral Health. Services may be community-based or may be directed to children at risk of or currently in group care placement.

- Provide that all behavioral health intervention services will be reimbursed according to a fee schedule developed by the Iowa Plan for Behavioral Health.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 23, 2011, as **ARC 9399B**. The Department received ten written comments on the Notice of Intended Action, and nine persons attended the public hearing held to receive comments. In response to these comments, the Department has made the following changes to the amendments as published under Notice of Intended Action:

- Added the following sentence to the introductory paragraph of rule 441—77.12(249A): “Providers must complete child abuse, dependent adult abuse, and criminal background screenings pursuant to Iowa Code section 135C.33(5)“a”(1) before employment of a staff member who will provide direct care.” Comments indicated confusion on whether this requirement applied to behavioral health intervention.

- Revised subrule 78.12(1), definition of “Licensed practitioner of the healing arts,” to remove the academic degree designations for a psychologist and to change the social worker reference to “a social worker (LMSW or LISW).”

- Changed the first sentence of new subparagraph 78.12(2)“a”(2) to read: “Residential behavioral health intervention is available to members eligible for foster group care payment pursuant to 441—subrule 156.20(1).” This wording removes the reference to the member’s age. The Department intends that any member who is eligible to be in foster group care may be eligible for behavioral health intervention.

- Added family training to the list of services in subparagraph 78.12(2)“a”(2) that are available under residential behavioral health intervention.

- Removed the words “using the same instrument” from subparagraph 78.12(4)“c”(3). Results of any approved instrument will be accepted.

The Department chose not to accept the requests to allow staff members without a college degree to provide in-home behavioral health intervention. On-site professional supervision is available for staff providing services in a facility, but not for staff providing in-home services.

The payment rate after July 1, 2011, will remain the same amount as in effect on February 28, 2011. In order to maintain a legal basis for retroactive reconciliation of reimbursement rates for remedial services provided in state fiscal year 2011, the Department has made the following changes to the amendments published under Notice:

- New Item 2 has been added to make a technical change in subparagraph 77.46(3)“a”(1) to update the name of the service. Subsequent item numbers have been renumbered accordingly.

- The rescission of the provider category of “remedial services” in subrule 79.1(2) in proposed Item 3 and the rescission of subrule 79.1(23) in proposed Item 5 have not been adopted because of the continuing need for retrospective adjustment of rates for services provided in state fiscal year 2011. Instead, the words “provided before July 1, 2011,” have been added to the introductory paragraph of subrule 79.1(23) in Item 5 to limit the application of the subrule, and subparagraphs 79.1(23)“b”(5) and 79.1(23)“b”(6) on rates for new providers and penalties for failure to file cost reports have been rescinded in new Item 6.

These amendments do not provide for waivers in specified situations because federal regulations for rehabilitation services have specific requirements which must be addressed and because the General Assembly supported moving remedial services to the mental health managed care program. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on April 13, 2011.

These amendments are intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, chapter 1192, section 31.

These amendments shall become effective on July 1, 2011.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Rescind rule 441—77.12(249A) and adopt the following **new** rule in lieu thereof:

441—77.12(249A) Behavioral health intervention. A provider of behavioral health intervention is eligible to participate in the medical assistance program when the provider is enrolled in the Iowa Plan for Behavioral Health pursuant to 441—Chapter 88, Division IV. Providers must complete child abuse, dependent adult abuse, and criminal background screenings pursuant to Iowa Code section 135C.33(5)“a”(1) before employment of a staff member who will provide direct care.

This rule is intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, chapter 1192, section 31.

ITEM 2. Amend subparagraph **77.46(3)“a”(1)** as follows:

(1) ~~Remedial services~~ Behavioral health intervention providers qualified under 441—77.12(249A).

ITEM 3. Amend rule 441—78.12(249A) as follows:

441—78.12(249A) Remedial services Behavioral health intervention. Payment will be made for ~~remedial~~ behavioral health intervention services not otherwise covered under this chapter that are designed to minimize or, if possible, eliminate the symptoms or causes of a an Axis I psychological disorder, subject to the limitations in this rule.

78.12(1) Definitions.

“Axis I disorder” means a diagnosed mental disorder, except for personality disorders and mental retardation, as set forth in the “Diagnostic and Statistical Manual IV-TR,” Fourth Edition.

“Behavioral health intervention” means skill-building services that focus on:

1. Addressing the mental and functional disabilities that negatively affect a member’s integration and stability in the community and quality of life;

2. Improving a member’s health and well-being related to the member’s Axis I disorder by reducing or managing the symptoms or behaviors that prevent the member from functioning at the member’s best possible functional level; and

3. Promoting a member’s mental health recovery and resilience through increasing the member’s ability to manage symptoms.

“Licensed practitioner of the healing arts” or “LPHA,” as used in this rule, means a practitioner such as a physician (M.D. or D.O.), an advanced registered nurse practitioner (ARNP), a psychologist, a social worker (LMSW or LISW), a marital and family therapist (LMFT), or a mental health counselor (LMHC) who:

1. Is licensed by the applicable state authority for that profession;

2. Is enrolled in the Iowa Plan for Behavioral Health (Iowa Plan) pursuant to 441—Chapter 88, Division IV; and

3. Is qualified to provide clinical assessment services (Current Procedural Terminology code 90801) under the Iowa Plan pursuant to 441—Chapter 88, Division IV.

78.12(1) 78.12(2) Covered services. ~~Medicaid covers the following remedial services:~~

~~a. Community psychiatric supportive treatment, which offers intensive interventions to modify psychological, behavioral, emotional, cognitive, and social factors affecting a member’s functioning when less intensive remedial services do not meet the member’s needs.~~

~~(1) Interventions must focus on the member’s remedial needs to minimize or eliminate psychological barriers to a member’s ability to effectively manage symptoms associated with a psychological disorder in an age-appropriate manner.~~

~~(2) Interventions may assist the member in skills such as conflict resolution, problem solving, social skills, interpersonal relationship skills, and communication.~~

~~(3) Community psychiatric supportive treatment is covered only for Medicaid members who are aged 20 or under.~~

~~(4) Community psychiatric supportive treatment is not intended for members in congregate care.~~

~~(5) Community psychiatric supportive treatment is not intended to be provided in a group.~~

a. Service setting.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Community-based behavioral health intervention is available to a member living in a community-based environment. Services have a primary goal of assisting the member and the member's family to learn age-appropriate skills to manage behavior and regain or retain self-control. Depending on the member's age and diagnosis, specific services offered may include:

1. Behavior intervention,
2. Crisis intervention,
3. Skill training and development, and
4. Family training.

(2) Residential behavioral health intervention is available to members eligible for foster group care payment pursuant to 441—subrule 156.20(1). Services have the primary goal of assisting the member to prepare to transition to the community through learning age-appropriate skills to manage behavior and regain or retain self-control. Specific services offered include:

1. Behavior intervention,
2. Crisis intervention, and
3. Family training.

(3) Behavioral health intervention is not covered for members who are in an acute care or psychiatric hospital, a long-term care facility, or a psychiatric medical institution for children.

b. *Crisis intervention.* Crisis intervention services shall provide a focused intervention and rapid stabilization of acute symptoms of mental illness or emotional distress. The intervention shall be designed to de-escalate situations in which a risk to self, others, or property exists.

(1) Services shall assist a member to regain self-control and reestablish effective management of behavioral symptoms associated with a psychological disorder in an age-appropriate manner.

(2) Crisis intervention is covered only for Medicaid members who are aged 20 or under and shall be provided as outlined in a written treatment plan.

(3) Crisis intervention services do not include control room or other restraint activities.

c. *Behavior intervention.* ~~Health or behavior~~ Behavior intervention, ~~used~~ includes services designed to modify the psychological, behavioral, emotional, cognitive, and social factors affecting a member's functioning.

(1) Interventions may address the following skills for effective functioning with family, peers, and community: ~~conflict resolution skills, problem-solving skills, social skills, interpersonal relationship skills, and communication skills.~~ in an age-appropriate manner:

1. Cognitive flexibility skills,
2. Communication skills,
3. Conflict resolution skills,
4. Emotional regulation skills,
5. Executive skills,
6. Interpersonal relationship skills,
7. Problem-solving skills, and
8. Social skills.

(2) ~~The purpose of intervention shall be to minimize or eliminate psychological barriers to the member's ability to effectively manage symptoms associated with a psychological disorder in an age-appropriate manner.~~ Behavior intervention shall be provided in a location appropriate for skill identification, teaching and development. Intervention may be provided in an individual, family, or group format as appropriate to meet the member's needs.

(3) ~~Health or behavior~~ Behavior intervention is covered only for Medicaid members aged 20 or under.

(4) Covered services include only direct teaching or development of skills and not general recreation, non-skill-based activities, mentoring, or interruption of school.

d. *Family training.* ~~Rehabilitation program, which consists of interventions to enhance a member's independent living, social, and communication skills; to minimize or eliminate psychological barriers to a member's ability to effectively manage symptoms associated with a psychological disorder;~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~and to maximize the member's ability to live and participate in the community.~~ Family training is covered only for Medicaid members aged 20 or under.

~~(1) Interventions may address the following skills for effective functioning with family, peers, and community: communication skills, conflict resolution skills, problem-solving skills, social skills, interpersonal relationship skills, and employment-related skills. Family training services shall:~~

1. Enhance the family's ability to effectively interact with the child and support the child's functioning in the home and community, and

2. Teach parents to identify and implement strategies to reduce target behaviors and reinforce the appropriate skills.

~~(2) Rehabilitation program services are covered only for Medicaid members who are aged 18 or over. Training provided must:~~

1. Be for the direct benefit of the member, and

2. Be based on a curriculum with a training manual.

e. Skill training and development. Skill training and development services are covered for Medicaid members aged 18 or over.

~~(1) Skills~~ Skill training and development, which consists shall consist of interventions to:

1. enhance Enhance a member's independent living, social, and communication skills; to

2. minimize Minimize or eliminate psychological barriers to a member's ability to effectively manage symptoms associated with a psychological disorder; and to

3. maximize Maximize a member's ability to live and participate in the community.

~~(4) (2) Interventions may include training in the following skills for effective functioning with family, peers, and community: communication skills, conflict resolution skills, problem-solving skills, social skills, interpersonal relationship skills, and employment-related skills.~~

1. Communication skills,

2. Conflict resolution skills,

3. Daily living skills,

4. Employment-related skills,

5. Interpersonal relationship skills,

6. Problem-solving skills, and

7. Social skills.

~~(2) Skills training and development services are covered only for Medicaid members aged 18 or over.~~

78.12(2) 78.12(3) Excluded services.

a. Services that are habilitative in nature are not covered as remedial services under behavioral health intervention. For purposes of this subrule, "habilitative services" means services that are designed to assist individuals in acquiring skills that they never had, as well as associated training to acquire self-help, socialization, and adaptive skills necessary to reside successfully in a home or community setting.

b. Respite, day care, education, and recreation services are not covered under behavioral health intervention.

~~78.12(3) 78.12(4) Coverage requirements.~~ Medicaid covers remedial services behavioral health intervention only when the following conditions are met:

a. A licensed practitioner of the healing arts acting within the practitioner's scope of practice under state law has diagnosed the member with a psychological disorder. For example, licensed practitioners of the healing arts include physicians (M.D. or D.O.), advanced registered nurse practitioners (ARNP), psychologists (Ph.D. or Psy.D.), independent social workers (LISW), marital and family therapists (LMFT), and mental health counselors (LMHC). For purposes of this rule, the licensed practitioner of the healing arts must be:

~~(1) Enrolled in the Iowa Plan pursuant to 441—Chapter 88, Division IV; and~~

~~(2) Qualified to provide clinical assessment services under the Iowa Plan pursuant to 441—Chapter 88, Division IV (Current Procedural Terminology code 90801).~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. The licensed practitioner of the healing arts has recommended the ~~remedial services~~ behavioral health intervention as part of a plan of treatment designed to treat the member's psychological disorder. The plan of treatment shall be comprehensive in nature and shall detail all behavioral health services that the member may require, not only services included under behavioral health intervention.

(1) The member's need for services must meet specific individual goals that are focused to address:

1. Risk of harm to self or others,

2. Behavioral support in the community,

3. Specific skills impaired due to the member's mental illness, and

4. Needs of children at risk of out-of-home placement due to mental health needs or the transition back to the community or home following an out-of-home placement.

(2) Diagnosis and treatment plan development provided in connection with this rule for members enrolled in the Iowa Plan are covered services under the Iowa Plan pursuant to 441—Chapter 88, Division IV.

c. For a member under the age of 21, the licensed practitioner of the healing arts:

(1) Has, in cooperation with the managed care contractor, selected a standardized assessment instrument appropriate for baseline measurement of the member's current skill level in managing mental health needs;

(2) Has completed an initial formal assessment of the member using the instrument selected; and

(3) Completes a formal assessment ~~using the same instrument~~ every six months thereafter if continued services are ordered.

d. The ~~remedial services~~ behavioral health intervention provider has prepared a written ~~remedial services~~ implementation plan that has been approved by: meets the requirements of subrule 78.12(5).

~~(1) The member or the member's parent or guardian; and~~

~~(2) The medical services unit of the Iowa Medicaid enterprise.~~

~~78.12(4)~~ **78.12(5)** *Approval of plan.* The ~~remedial services~~ behavioral health intervention provider shall ~~submit the treatment plan, the results of the formal assessment, and the remedial services implementation plan to the Iowa Medicaid enterprise (IME) medical services unit for approval before providing contact the Iowa Plan provider for authorization of the services.~~

a. Initial plan. The ~~IME medical services unit shall approve the provider's initial remedial services implementation plan if~~ must meet all of the following criteria:

(1) The plan conforms to the medical necessity requirements in subrule 78.12(3) 78.12(6);

(2) The plan is consistent with the written diagnosis and treatment recommendations made by the licensed practitioner of the healing arts;

(3) The plan is sufficient in amount, duration, and scope to reasonably achieve its purpose;

(4) The provider can demonstrate that the provider possesses the skills and resources necessary to implement the plan, as required in meets the requirements of rule 441—77.12(249A); and

(5) The plan does not exceed six months' duration; and

~~(6) The plan requires that written progress notes be submitted no less often than every six weeks to the IME medical services unit.~~

b. Subsequent plans. The ~~IME medical services unit~~ Iowa Plan contractor may approve a subsequent ~~remedial services~~ implementation plan according to the conditions in paragraph 78.12(5) "a" if the services are recommended by a licensed practitioner of the healing arts who has:

(1) Reexamined the member;

(2) Reviewed the original diagnosis and treatment plan; and

(3) Evaluated the member's progress, including a formal assessment as required by 78.12(3) "c"(3); and 78.12(4) "c"(3).

(4) ~~Submitted the results of the formal assessment with the recommendation for continued services.~~

c. Quality review. The ~~IME medical services unit will establish a quality review process. Reviews will evaluate:~~

~~(1) The time elapsed from referral to remedial plan development;~~

~~(2) The continuity of treatment;~~

~~(3) The affiliation of the licensed practitioner of the healing arts with the remedial services provider;~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

- ~~(4) Gaps in service;~~
- ~~(5) The results achieved; and~~
- ~~(6) Member satisfaction.~~

78.12(5) 78.12(6) Medical necessity. Nothing in this rule shall be deemed to exempt coverage of ~~remedial services~~ behavioral health intervention from the requirement that services be medically necessary. ~~“Medically~~ For purposes of behavioral health intervention, “medically necessary” means that the service is:

- a. Consistent with the diagnosis and treatment of the member’s condition and specific to a daily impairment caused by an Axis I disorder;
- b. Required to meet the medical needs of the member and is needed for reasons other than the convenience of the member or the member’s caregiver;
- c. The least costly type of service that can reasonably meet the medical needs of the member; and
- d. In accordance with the standards of ~~good~~ evidence-based medical practice. The standards of ~~good~~ practice for each field of medical and remedial care covered by the Iowa Medicaid program are those standards of ~~good~~ practice identified by:

- (1) Knowledgeable Iowa clinicians practicing or teaching in the field; and
- (2) The professional literature regarding best evidence-based practices in the field.

This rule is intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, chapter 1192, section 31.

ITEM 4. Adopt the following new provider category in subrule **79.1(2)**:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Behavioral health intervention	Fee schedule as determined by the Iowa Plan for Behavioral Health	Fee schedule in effect 7/1/11.

ITEM 5. Amend subrule 79.1(23), introductory paragraph, as follows:

79.1(23) Reimbursement for remedial services. Reimbursement for remedial services provided before July 1, 2011, shall be made on the basis of a unit rate that is calculated retrospectively for each provider, considering reasonable and proper costs of operation. The unit rate shall not exceed the established unit-of-service limit on reasonable costs pursuant to subparagraph 79.1(23)“c”(1). The unit of service may be a quarter-hour, a half-hour, an hour, a half-day, or a day, depending on the service provided.

ITEM 6. Rescind subparagraphs **79.1(23)“b”(5)** and **(6)**.

ITEM 7. Amend subparagraph **79.3(2)“d”(25)** as follows:

~~(25) Remedial services and rehabilitation services for adults with a chronic mental illness~~ Behavioral health intervention:

- 1. Order for services.
- 2. Comprehensive treatment or service plan (initial and subsequent).
- 3. Service notes or narratives.

ITEM 8. Adopt the following new subparagraph **88.65(3)“a”(16)**:

(16) Behavioral health intervention as set forth in rule 441—78.12(249A).

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 9. Amend subrule 88.65(6) as follows:

88.65(6) *Excluded services.* Unless the service is specifically included in the contract, the contractor shall not be required to provide long-term care (e.g., residential care facilities, nursing facilities, state resource centers, or intermediate care facilities for persons with mental retardation) ~~or remedial services.~~

[Filed 4/13/11, effective 7/1/11]

[Published 5/4/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.

ARC 9488B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 232.142 and 237.3, the Department of Human Services amends Chapter 105, "County and Multicounty Juvenile Detention Homes and County and Multicounty Juvenile Shelter Care Homes," Chapter 114, "Licensing and Regulation of All Group Living Foster Care Facilities for Children," and Chapter 115, "Licensing and Regulation of Comprehensive Residential Facilities for Children," Iowa Administrative Code.

These amendments:

- Prohibit the use of prone restraint (a physical restraint technique in which a child is held face down on the floor) in foster group care facilities, emergency juvenile shelters, and juvenile detention facilities. Safer methods of physical restraint exist. This change aligns restraint standards for these facilities with state standards already adopted for educational settings and for psychiatric medical institutions for children.
- Allow attestations of employee health to be provided by advanced registered nurse practitioners or physician assistants as well as physicians. This change makes it easier for facility staff to obtain these statements, especially in rural areas.
- Add requirements for 24-hour supervision by staff members who are awake for the entire shift (instead of staff who are available while sleeping at the facility). For group care, these requirements were previously included in 441—Chapter 185, "Rehabilitative Treatment Services," which has been rescinded.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 9, 2011, as **ARC 9368B**. The Department received one written comment on the Notice of Intended Action, which was in support of the amendments. No one attended the public hearing.

The Department has made one change to the amendments as published under Notice of Intended Action to make the restraint provisions uniform across shelter, detention, and foster group care facilities. In subrule 114.20(3), introductory paragraph, the words "to prevent behavior extremely disruptive to others or" have been stricken. The allowable conditions for use of restraint are to prevent the child from injury to self, to others, or to property in all classes of facilities. The introductory paragraph of subrule 114.20(3) now reads as follows:

"114.20(3) *Physical restraint.* The use of physical restraint shall be employed only to prevent the child from injury to self, to others, or to property. Physical restraint must be conducted with the child in a standing position whenever possible."

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on April 13, 2011.

These amendments are intended to implement Iowa Code section 232.142 and chapter 237.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments shall become effective on July 1, 2011.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 105, 114, 115] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9368B**, IAB 2/9/11.

[Filed 4/13/11, effective 7/1/11]

[Published 5/4/11]

[For replacement pages for IAC, see IAC Supplement 5/4/11.]

ARC 9490B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

This amendment updates the Child Care Assistance fee schedule for state fiscal year 2012 based on the federal poverty income guidelines issued in 2011. The Department reviews the fee schedule annually in relation to the poverty income guidelines. A family whose income is below the federal poverty level is not assessed a fee for child care. The increase in the income levels on the fee schedule allows families that have increased income comparable to the increase in the poverty level to maintain eligibility for Child Care Assistance without paying higher fees.

Any fee that is determined before July 1, 2011, will be based on the current fee schedule and will remain in effect until the family's eligibility is redetermined. The new fee schedule will be applied to all new applications as of July 1, 2011, and will be applied to existing cases when the family's eligibility is redetermined. Eligibility is redetermined at the annual recertification and when the family reports a change that affects eligibility, such as the birth of a child.

Approximately three-fourths of the families receiving Child Care Assistance pay no fees, either because of income below the poverty level or because the family is eligible for assistance without regard to income (such as Family Investment Program participants and families receiving protective child care).

This amendment does not provide for waivers in specified situations. Families may request a waiver under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on April 13, 2011.

The Department finds that notice and public participation on this amendment are unnecessary because this amendment merely applies an expected change due to new federal poverty level guidelines, which are not under the control of the Department. Therefore, this amendment is filed without notice pursuant to Iowa Code section 17A.4(3).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 237A.13.

This amendment shall become effective on July 1, 2011.

The following amendment is adopted.

Amend paragraph **170.4(2)"a"** as follows:

a. Sliding fee schedule.

(1) The fee schedule shown in the following table is effective for eligibility determinations made on or after July 1, 2009 2011:

HUMAN SERVICES DEPARTMENT[441](cont'd)

Level	Monthly Income According to Family Size										Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	1	2	3 or more
A	<u>\$858</u>	<u>\$1,154</u>	<u>\$1,450</u>	<u>\$1,746</u>	<u>\$2,043</u>	<u>\$2,338</u>	<u>\$2,634</u>	<u>\$2,931</u>	<u>\$3,226</u>	<u>\$3,523</u>	\$0.00	\$0.00	\$0.00
	<u>\$863</u>	<u>\$1,165</u>	<u>\$1,468</u>	<u>\$1,770</u>	<u>\$2,072</u>	<u>\$2,375</u>	<u>\$2,677</u>	<u>\$2,979</u>	<u>\$3,282</u>	<u>\$3,584</u>			
B	<u>\$903</u>	<u>\$1,215</u>	<u>\$1,526</u>	<u>\$1,838</u>	<u>\$2,150</u>	<u>\$2,461</u>	<u>\$2,773</u>	<u>\$3,085</u>	<u>\$3,396</u>	<u>\$3,708</u>	\$0.20	\$0.45	\$0.70
	<u>\$908</u>	<u>\$1,226</u>	<u>\$1,545</u>	<u>\$1,863</u>	<u>\$2,181</u>	<u>\$2,500</u>	<u>\$2,818</u>	<u>\$3,136</u>	<u>\$3,455</u>	<u>\$3,773</u>			
C	<u>\$928</u>	<u>\$1,249</u>	<u>\$1,569</u>	<u>\$1,889</u>	<u>\$2,210</u>	<u>\$2,530</u>	<u>\$2,851</u>	<u>\$3,171</u>	<u>\$3,491</u>	<u>\$3,812</u>	\$0.45	\$0.70	\$0.95
	<u>\$933</u>	<u>\$1,260</u>	<u>\$1,588</u>	<u>\$1,915</u>	<u>\$2,242</u>	<u>\$2,570</u>	<u>\$2,897</u>	<u>\$3,224</u>	<u>\$3,552</u>	<u>\$3,879</u>			
D	<u>\$954</u>	<u>\$1,283</u>	<u>\$1,611</u>	<u>\$1,941</u>	<u>\$2,270</u>	<u>\$2,599</u>	<u>\$2,928</u>	<u>\$3,258</u>	<u>\$3,586</u>	<u>\$3,916</u>	\$0.70	\$0.95	\$1.20
	<u>\$959</u>	<u>\$1,295</u>	<u>\$1,632</u>	<u>\$1,967</u>	<u>\$2,303</u>	<u>\$2,640</u>	<u>\$2,976</u>	<u>\$3,312</u>	<u>\$3,648</u>	<u>\$3,984</u>			
E	<u>\$980</u>	<u>\$1,319</u>	<u>\$1,657</u>	<u>\$1,995</u>	<u>\$2,334</u>	<u>\$2,672</u>	<u>\$3,010</u>	<u>\$3,349</u>	<u>\$3,687</u>	<u>\$4,025</u>	\$0.95	\$1.20	\$1.45
	<u>\$986</u>	<u>\$1,331</u>	<u>\$1,677</u>	<u>\$2,022</u>	<u>\$2,368</u>	<u>\$2,714</u>	<u>\$3,059</u>	<u>\$3,404</u>	<u>\$3,751</u>	<u>\$4,096</u>			
F	<u>\$1,007</u>	<u>\$1,355</u>	<u>\$1,702</u>	<u>\$2,050</u>	<u>\$2,398</u>	<u>\$2,744</u>	<u>\$3,092</u>	<u>\$3,440</u>	<u>\$3,787</u>	<u>\$4,135</u>	\$1.20	\$1.45	\$1.70
	<u>\$1,013</u>	<u>\$1,367</u>	<u>\$1,723</u>	<u>\$2,077</u>	<u>\$2,432</u>	<u>\$2,788</u>	<u>\$3,142</u>	<u>\$3,497</u>	<u>\$3,853</u>	<u>\$4,207</u>			
G	<u>\$1,035</u>	<u>\$1,393</u>	<u>\$1,749</u>	<u>\$2,107</u>	<u>\$2,465</u>	<u>\$2,821</u>	<u>\$3,179</u>	<u>\$3,537</u>	<u>\$3,893</u>	<u>\$4,251</u>	\$1.45	\$1.70	\$1.95
	<u>\$1,041</u>	<u>\$1,405</u>	<u>\$1,771</u>	<u>\$2,136</u>	<u>\$2,500</u>	<u>\$2,866</u>	<u>\$3,230</u>	<u>\$3,595</u>	<u>\$3,961</u>	<u>\$4,325</u>			
H	<u>\$1,063</u>	<u>\$1,431</u>	<u>\$1,797</u>	<u>\$2,164</u>	<u>\$2,532</u>	<u>\$2,898</u>	<u>\$3,265</u>	<u>\$3,633</u>	<u>\$3,999</u>	<u>\$4,366</u>	\$1.70	\$1.95	\$2.20
	<u>\$1,069</u>	<u>\$1,444</u>	<u>\$1,819</u>	<u>\$2,194</u>	<u>\$2,568</u>	<u>\$2,944</u>	<u>\$3,318</u>	<u>\$3,693</u>	<u>\$4,069</u>	<u>\$4,443</u>			
I	<u>\$1,093</u>	<u>\$1,471</u>	<u>\$1,847</u>	<u>\$2,225</u>	<u>\$2,603</u>	<u>\$2,979</u>	<u>\$3,357</u>	<u>\$3,735</u>	<u>\$4,111</u>	<u>\$4,489</u>	\$1.95	\$2.20	\$2.45
	<u>\$1,099</u>	<u>\$1,484</u>	<u>\$1,870</u>	<u>\$2,255</u>	<u>\$2,640</u>	<u>\$3,026</u>	<u>\$3,411</u>	<u>\$3,796</u>	<u>\$4,182</u>	<u>\$4,567</u>			
J	<u>\$1,123</u>	<u>\$1,511</u>	<u>\$1,898</u>	<u>\$2,286</u>	<u>\$2,674</u>	<u>\$3,060</u>	<u>\$3,448</u>	<u>\$3,836</u>	<u>\$4,223</u>	<u>\$4,611</u>	\$2.20	\$2.45	\$2.70
	<u>\$1,129</u>	<u>\$1,525</u>	<u>\$1,921</u>	<u>\$2,317</u>	<u>\$2,712</u>	<u>\$3,109</u>	<u>\$3,504</u>	<u>\$3,900</u>	<u>\$4,296</u>	<u>\$4,692</u>			
K	<u>\$1,154</u>	<u>\$1,553</u>	<u>\$1,951</u>	<u>\$2,350</u>	<u>\$2,748</u>	<u>\$3,146</u>	<u>\$3,545</u>	<u>\$3,944</u>	<u>\$4,341</u>	<u>\$4,740</u>	\$2.45	\$2.70	\$2.95
	<u>\$1,161</u>	<u>\$1,567</u>	<u>\$1,975</u>	<u>\$2,382</u>	<u>\$2,788</u>	<u>\$3,196</u>	<u>\$3,602</u>	<u>\$4,009</u>	<u>\$4,417</u>	<u>\$4,823</u>			
L	<u>\$1,186</u>	<u>\$1,595</u>	<u>\$2,004</u>	<u>\$2,414</u>	<u>\$2,823</u>	<u>\$3,232</u>	<u>\$3,641</u>	<u>\$4,051</u>	<u>\$4,460</u>	<u>\$4,869</u>	\$2.70	\$2.95	\$3.20
	<u>\$1,192</u>	<u>\$1,610</u>	<u>\$2,029</u>	<u>\$2,446</u>	<u>\$2,864</u>	<u>\$3,283</u>	<u>\$3,701</u>	<u>\$4,118</u>	<u>\$4,537</u>	<u>\$4,955</u>			
M	<u>\$1,219</u>	<u>\$1,640</u>	<u>\$2,060</u>	<u>\$2,481</u>	<u>\$2,902</u>	<u>\$3,322</u>	<u>\$3,743</u>	<u>\$4,166</u>	<u>\$4,584</u>	<u>\$5,006</u>	\$2.95	\$3.20	\$3.45
	<u>\$1,226</u>	<u>\$1,655</u>	<u>\$2,086</u>	<u>\$2,515</u>	<u>\$2,944</u>	<u>\$3,375</u>	<u>\$3,804</u>	<u>\$4,233</u>	<u>\$4,664</u>	<u>\$5,093</u>			
N	<u>\$1,252</u>	<u>\$1,685</u>	<u>\$2,116</u>	<u>\$2,549</u>	<u>\$2,981</u>	<u>\$3,413</u>	<u>\$3,845</u>	<u>\$4,278</u>	<u>\$4,709</u>	<u>\$5,142</u>	\$3.20	\$3.45	\$3.70
	<u>\$1,259</u>	<u>\$1,700</u>	<u>\$2,142</u>	<u>\$2,583</u>	<u>\$3,024</u>	<u>\$3,467</u>	<u>\$3,908</u>	<u>\$4,349</u>	<u>\$4,791</u>	<u>\$5,232</u>			
O	<u>\$1,287</u>	<u>\$1,732</u>	<u>\$2,175</u>	<u>\$2,620</u>	<u>\$3,065</u>	<u>\$3,508</u>	<u>\$3,953</u>	<u>\$4,398</u>	<u>\$4,841</u>	<u>\$5,286</u>	\$3.45	\$3.70	\$3.95
	<u>\$1,294</u>	<u>\$1,748</u>	<u>\$2,202</u>	<u>\$2,656</u>	<u>\$3,109</u>	<u>\$3,564</u>	<u>\$4,017</u>	<u>\$4,470</u>	<u>\$4,925</u>	<u>\$5,379</u>			
P	<u>\$1,322</u>	<u>\$1,779</u>	<u>\$2,235</u>	<u>\$2,691</u>	<u>\$3,148</u>	<u>\$3,604</u>	<u>\$4,061</u>	<u>\$4,518</u>	<u>\$4,973</u>	<u>\$5,430</u>	\$3.70	\$3.95	\$4.20
	<u>\$1,330</u>	<u>\$1,795</u>	<u>\$2,262</u>	<u>\$2,728</u>	<u>\$3,194</u>	<u>\$3,661</u>	<u>\$4,127</u>	<u>\$4,592</u>	<u>\$5,059</u>	<u>\$5,525</u>			
Q	<u>\$1,359</u>	<u>\$1,829</u>	<u>\$2,297</u>	<u>\$2,767</u>	<u>\$3,237</u>	<u>\$3,705</u>	<u>\$4,174</u>	<u>\$4,644</u>	<u>\$5,112</u>	<u>\$5,582</u>	\$3.95	\$4.20	\$4.45
	<u>\$1,367</u>	<u>\$1,846</u>	<u>\$2,326</u>	<u>\$2,804</u>	<u>\$3,283</u>	<u>\$3,763</u>	<u>\$4,242</u>	<u>\$4,721</u>	<u>\$5,201</u>	<u>\$5,680</u>			
R	<u>\$1,396</u>	<u>\$1,879</u>	<u>\$2,360</u>	<u>\$2,842</u>	<u>\$3,325</u>	<u>\$3,806</u>	<u>\$4,288</u>	<u>\$4,771</u>	<u>\$5,251</u>	<u>\$5,734</u>	\$4.20	\$4.45	\$4.70
	<u>\$1,404</u>	<u>\$1,896</u>	<u>\$2,389</u>	<u>\$2,881</u>	<u>\$3,373</u>	<u>\$3,866</u>	<u>\$4,358</u>	<u>\$4,849</u>	<u>\$5,343</u>	<u>\$5,834</u>			
S	<u>\$1,435</u>	<u>\$1,931</u>	<u>\$2,426</u>	<u>\$2,922</u>	<u>\$3,418</u>	<u>\$3,912</u>	<u>\$4,408</u>	<u>\$4,904</u>	<u>\$5,398</u>	<u>\$5,894</u>	\$4.45	\$4.70	\$4.95
	<u>\$1,443</u>	<u>\$1,949</u>	<u>\$2,456</u>	<u>\$2,962</u>	<u>\$3,467</u>	<u>\$3,974</u>	<u>\$4,480</u>	<u>\$4,985</u>	<u>\$5,492</u>	<u>\$5,998</u>			
T	<u>\$1,475</u>	<u>\$1,984</u>	<u>\$2,492</u>	<u>\$3,001</u>	<u>\$3,511</u>	<u>\$4,019</u>	<u>\$4,528</u>	<u>\$5,038</u>	<u>\$5,546</u>	<u>\$6,055</u>	\$4.70	\$4.95	\$5.20
	<u>\$1,483</u>	<u>\$2,002</u>	<u>\$2,523</u>	<u>\$3,042</u>	<u>\$3,561</u>	<u>\$4,082</u>	<u>\$4,602</u>	<u>\$5,121</u>	<u>\$5,642</u>	<u>\$6,161</u>			
U	<u>\$1,516</u>	<u>\$2,040</u>	<u>\$2,562</u>	<u>\$3,085</u>	<u>\$3,609</u>	<u>\$4,131</u>	<u>\$4,655</u>	<u>\$5,179</u>	<u>\$5,701</u>	<u>\$6,225</u>	\$4.95	\$5.20	\$5.45
	<u>\$1,524</u>	<u>\$2,058</u>	<u>\$2,594</u>	<u>\$3,127</u>	<u>\$3,661</u>	<u>\$4,197</u>	<u>\$4,731</u>	<u>\$5,264</u>	<u>\$5,800</u>	<u>\$6,334</u>			
V	<u>\$1,557</u>	<u>\$2,095</u>	<u>\$2,631</u>	<u>\$3,169</u>	<u>\$3,707</u>	<u>\$4,244</u>	<u>\$4,782</u>	<u>\$5,320</u>	<u>\$5,856</u>	<u>\$6,394</u>	\$5.20	\$5.45	\$5.70
	<u>\$1,566</u>	<u>\$2,114</u>	<u>\$2,664</u>	<u>\$3,213</u>	<u>\$3,761</u>	<u>\$4,311</u>	<u>\$4,859</u>	<u>\$5,408</u>	<u>\$5,958</u>	<u>\$6,506</u>			

HUMAN SERVICES DEPARTMENT[441](cont'd)

Level	Monthly Income According to Family Size										Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	1	2	3 or more
W	\$1,601	\$2,154	\$2,705	\$3,258	\$3,811	\$4,363	\$4,916	\$5,469	\$6,020	\$6,573	\$5.45	\$5.70	\$5.95
	\$1,610	\$2,173	\$2,739	\$3,303	\$3,866	\$4,432	\$4,995	\$5,559	\$6,125	\$6,688			
X	\$1,644	\$2,212	\$2,779	\$3,347	\$3,915	\$4,481	\$5,050	\$5,618	\$6,184	\$6,752	\$5.70	\$5.95	\$6.20
	\$1,653	\$2,233	\$2,813	\$3,392	\$3,972	\$4,552	\$5,131	\$5,711	\$6,291	\$6,871			
Y	\$1,690	\$2,274	\$2,857	\$3,441	\$4,025	\$4,607	\$5,191	\$5,775	\$6,357	\$6,941	\$5.95	\$6.20	\$6.45
	\$1,700	\$2,295	\$2,892	\$3,487	\$4,083	\$4,680	\$5,275	\$5,870	\$6,468	\$7,063			
Z	\$1,736	\$2,336	\$2,934	\$3,534	\$4,134	\$4,732	\$5,332	\$5,932	\$6,530	\$7,130	\$6.20	\$6.45	\$6.70
	\$1,746	\$2,358	\$2,971	\$3,582	\$4,194	\$4,807	\$5,419	\$6,030	\$6,644	\$7,255			
AA	\$1,785	\$2,402	\$3,017	\$3,633	\$4,250	\$4,865	\$5,482	\$6,098	\$6,713	\$7,330	\$6.45	\$6.70	\$6.95
	\$1,795	\$2,424	\$3,054	\$3,683	\$4,311	\$4,942	\$5,571	\$6,199	\$6,830	\$7,458			
BB	\$1,834	\$2,467	\$3,099	\$3,732	\$4,366	\$4,997	\$5,631	\$6,264	\$6,896	\$7,530	\$6.70	\$6.95	\$7.20
	\$1,844	\$2,490	\$3,137	\$3,783	\$4,429	\$5,077	\$5,722	\$6,368	\$7,016	\$7,662			

(2) To use the chart:

(1) 1. Find the family size used in determining income eligibility for service.

(2) 2. Move across the monthly income table to the column headed by that number. (See subparagraph (5) paragraph "5" if the family has more than ten members.)

(3) 3. Move down the column for the applicable family size to the highest figure that is equal to or less than the family's gross monthly income. Income at or above that amount (but less than the amount in the next row) corresponds to the fees in the last three columns of that row.

(4) 4. Choose the fee that corresponds to the number of children in the family who receive child care assistance.

(5) 5. When a family has more than ten members, determine the income level by multiplying the figures in the four-member column for the rows closest to the family's income level by 0.03. Round the numbers to the nearest dollar and multiply by the number of family members in excess of ten. Add the results to the amounts in the ten-member column to determine the threshold amounts.

(3) EXAMPLES:

1. to 3. No change.

[Filed Without Notice 4/13/11, effective 7/1/11]

[Published 5/4/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.

ARC 9491B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 172, "Family-Centered Child Welfare Services," Iowa Administrative Code.

These amendments update the rules on family-centered child welfare services to:

- Reflect the standard state contracting terminology, which refers to "the agency" rather than "the department" and "the contractor" rather than "the provider."
- Clarify who may be included in the provision of services.
- Conform the expectations for contractors to the language of the requests for proposals that are currently in process (bid number ACFS-11-097) for new contracts to be effective on July 1, 2011.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 9, 2011, as **ARC 9353B**. The Department received one internal comment questioning the wording of subrule 172.12(1).

HUMAN SERVICES DEPARTMENT[441](cont'd)

In response, the word “shall” has been changed to “may” in the introductory paragraph of subrule 172.12(1), which now reads: “**172.12(1)** The agency may refer a family for family-centered safety plan services when.” The Department does not intend to refer a family for safety services if the family’s safety plan is sufficient to make the child conditionally safe without services.

The Department has also added the words “and in the contract” at the end of the first sentence in the introductory paragraph of subrule 172.13(2), to clarify that service activities may be spelled out in more detail during contract negotiations. The introductory paragraph of subrule 172.13(2) now reads as follows:

“**172.13(2)** *Service activities.* The activities to be provided by safety plan services shall be as described in the scope of services section of the request for proposals and in the contract. At a minimum, a contractor for safety plan services shall do all of the following:”

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on April 13, 2011.

These amendments are intended to implement Iowa Code section 234.6.

These amendments shall become effective on July 1, 2011.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 172] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 9353B**, IAB 2/9/11.

[Filed 4/13/11, effective 7/1/11]

[Published 5/4/11]

[For replacement pages for IAC, see IAC Supplement 5/4/11.]

ARC 9498B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 507B.12 and 513C.12 and chapter 514D, the Insurance Division hereby amends Chapter 15, “Unfair Trade Practices,” and Chapter 36, “Individual Accident and Health—Minimum Standards,” Iowa Administrative Code.

The rules in Chapter 15 set forth prohibited unfair trade practices, including provisions prohibiting unfair discrimination against individuals of the same class. The rules in Chapter 36 provide reasonable standardization and simplification of terms and coverages of individual accident and sickness insurance policies. The amendments to the rules implement the Patient Protection and Affordable Care Act (Pub. L. 111-148, 124 Stat. 119, H.R. 3590, enacted March 23, 2010) by setting forth the requirements and procedures to be followed by insurance companies for individual health insurance coverage for children under the age of 19. Persons and entities shall comply with the amendments adopted herein beginning June 8, 2011, for policies offered for sale on or after June 8, 2011.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 23, 2011, as **ARC 9398B**. A public hearing was held on March 23, 2011, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. Comments were received, and the following changes were made.

In paragraph 36.13(2)“b,” the term “policy” was added to clarify the term “child-only applicant.” This change was made in several other places in the amendments for similar clarification purposes. Also, the dates for the open enrollment period were delayed one month.

In paragraph 36.13(2)“d,” the phrase “individuals up to the age of 19” was changed to “individuals under the age of 19,” and the term “health benefit plans available to children under the age of 19” was changed to “child-only policies” to be consistent with the rest of the rule.

INSURANCE DIVISION[191](cont'd)

In paragraph 36.13(2)“e,” the phrase “carriers shall not offer” was changed to “carriers are not required to offer” in the first sentence so that a carrier was not prohibited from offering child-only policies outside of an open enrollment period. Also, in the third sentence, the phrase “to a child under the age of 19” was deleted because it is implied within the definition of child-only policy.

In subparagraphs 36.13(2)“e”(1), (5) and (6), clarifications were made regarding whether the events described applied to the child or to the child’s parent or guardian.

These amendments are intended to implement Iowa Code chapters 507B, 513C, and 514D and the Patient Protection and Affordable Care Act (Pub. L. 111-148, 124 Stat. 119, H.R. 3590, enacted March 23, 2010).

These amendments will become effective June 8, 2011.

The following amendments are adopted.

ITEM 1. Adopt the following new subrule 15.11(6):

15.11(6) *Discrimination relating to children under the age of 19.* It is an unfair trade practice to:

- a. Encourage individuals or groups to refrain from filing an application with an insurer for coverage for a child under the age of 19 because of the child’s health status, claims experience, industry, occupation, or geographic location;
- b. Encourage or direct children under the age of 19 to seek coverage from another insurer because of the child’s health status, claims experience, industry, occupation, or geographic location; and
- c. Encourage an employer to exclude an employee from coverage.

ITEM 2. Adopt the following new rule 191—36.13(513C,514D):

191—36.13(513C,514D) Individual health insurance coverage for children under the age of 19.

36.13(1) *Purpose, applicability and effective date.*

- a. The purpose of this rule is to set forth the requirements and procedures to be followed for individual health insurance coverage for children under the age of 19.
- b. This rule shall apply to all “carriers” as defined in Iowa Code subsection 513C.3(5). For purposes of this rule, “carrier” means the same as it is defined in Iowa Code subsection 513C.3(5).
- c. For purposes of this rule, a “child-only” policy means a health benefit plan delivered or issued for delivery to an individual who is the primary subscriber on the policy and who is under the age of 19. A “child-only” policy does not include a health benefit plan that is delivered or issued for delivery to a primary subscriber who is 19 years of age and older but that insures persons under the age of 19.
- d. This rule shall become effective June 8, 2011, for policies sold or issued on or after that date.

36.13(2) *Coverage requirement for children under the age of 19, open enrollment period and notice.*

- a. Carriers doing business in the state of Iowa shall offer coverage to primary subscribers under the age of 19 during the open enrollment period as established in this rule.
- b. The open enrollment period for child-only policy applicants shall commence on July 1, 2011, and end on August 14, 2011. Carriers shall provide subsequent open enrollment periods for child-only policy applicants for the periods of July 1 through August 14 in the years 2012 and 2013.
- c. A carrier shall advertise the open enrollment period for children under the age of 19, including the availability of child-only policy coverage, on the carrier’s Web site and through any other media as determined by the carrier. The advertising shall be conspicuous and provided in a manner reasonably calculated to give potential applicants timely and informative notice regarding the annual open enrollment period.
- d. For child-only policy applications received during the open enrollment period, individual health insurance coverage shall be offered on a guaranteed-issue basis to individuals under the age of 19. The child-only policies shall be in compliance with federal and state law and shall be filed with the Iowa insurance division in accordance with Iowa law.
- e. Carriers are not required to offer child-only policies outside the open enrollment periods provided in this subrule. However, a carrier shall permit a child under the age of 19 to apply and enroll for child-only policy coverage during a special enrollment period under the terms of the child-only policy if the child has experienced a qualifying event. A child-only policy issued during a special

INSURANCE DIVISION[191](cont'd)

enrollment period after a qualifying event shall be issued on a guaranteed basis and shall not impose any preexisting conditions. For purposes of this paragraph, a “qualifying event” shall mean one or more of the following:

(1) The child lost creditable coverage as defined in Iowa Code section 514A.3B(3) as a result of termination of the parent’s or guardian’s employment or eligibility, the involuntary termination of the creditable coverage, death of the child’s parent or guardian, or the divorce or legal separation of the child’s parent or guardian, and a request for special enrollment is made within 30 days after termination of the creditable coverage.

(2) The child became a resident of Iowa during a month that was not the child’s birth month, and a request for coverage is made within 30 days after the child became a resident of Iowa.

(3) An event of marriage, birth, adoption or placement for adoption occurs and the request for special enrollment is made within 30 days after the occurrence of the event.

(4) The child was covered under a mandated continuation of a group health plan or group health insurance coverage plan until the coverage under that plan was exhausted.

(5) A court has ordered that coverage be provided for a spouse or minor or dependent child under a covered parent’s or guardian’s health insurance coverage and the request for enrollment is made within 30 days after issuance of the court order.

(6) The child changes status and the parent or guardian becomes an eligible employee and requests enrollment within 63 days after the date of the change in status.

f. An individual applying for coverage during the open enrollment period or during a special enrollment period shall not be eligible for guaranteed-issue coverage if the individual has other coverage or if other coverage is available at the time of the effective date of coverage. Other coverage shall not include coverage through the Iowa Comprehensive Health Association (HIPIOWA) or HIPIOWA-FED.

g. A carrier that issues a policy pursuant to this rule shall comply with all other applicable statutes and administrative rules, both state and federal, regarding individual health benefit policies.

h. A child-only policy may be appropriately rated based on the health status of the child-only policy applicant.

ITEM 3. Amend **191—Chapter 36**, implementation sentence for Division I, as follows:
These rules are intended to implement Iowa Code chapters 507B, 510, 513C and 514D.

[Filed 4/15/11, effective 6/8/11]

[Published 5/4/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.

ARC 9500B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 514C.28(12), the Insurance Division hereby amends Chapter 35, “Accident and Health Insurance,” Iowa Administrative Code.

The amendment implements Iowa Code section 514C.28, which requires a group health plan established for employees of the state of Iowa to provide coverage benefits to covered individuals under 21 years of age for the diagnostic assessment of autism spectrum disorders and for the treatment of autism spectrum disorders.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 26, 2011, as **ARC 9340B**. A public hearing was held on February 17, 2011. Comments were received, and the following changes were made.

In the definition of “autism spectrum disorders,” Diagnostic code 299.9, unspecified pervasive developmental disorder, was deleted. The definition of “group plan” or “group health plan” was added.

Subrule 35.40(4), drugs and devices, was not adopted due to lack of authority to support the provision. As a result, subrules 35.40(5) to 35.40(9) were renumbered as subrules 35.40(4) to 35.40(8).

INSURANCE DIVISION[191](cont'd)

In subrule 35.40(6), language was added to specify that a group health plan shall not deny payment or reimbursement for the services provided by certified behavior analysts.

This amendment is intended to implement Iowa Code section 514C.28.

This amendment will become effective June 8, 2011.

The following amendment is adopted.

Adopt the following new rule 191—35.40(514C):

191—35.40(514C) Autism spectrum disorders coverage.

35.40(1) Purpose. This rule implements Iowa Code section 514C.28, relating to autism spectrum disorders coverage in a group plan established pursuant to Iowa Code chapter 509A for employees of the state that provides for third-party payment or prepayment of health, medical, and surgical coverage benefits.

35.40(2) Definitions. For purposes of this rule, the definitions found in Iowa Code section 514C.28(2) shall apply. In addition, the following definitions shall apply:

“*Autism spectrum disorders*” means the following neurological disorders as defined under the following diagnostic classes within the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, edition DSM-IV-TR:

1. Autistic disorders. Diagnostic code 299.00.
2. Rett’s Disorder. Diagnostic code 299.80.
3. Childhood Disintegrative Disorder. Diagnostic code 299.10.
4. Asperger’s Disorder. Diagnostic code 299.80.
5. Pervasive Developmental Disorder NOS. Diagnostic code 299.80.

“*Commissioner*” means the commissioner of insurance.

“*Group plan*” or “*group health plan*” means a group health plan established for the employees of the state of Iowa under Iowa Code chapter 509A.

35.40(3) Services. A group plan is not required to provide coverage for any of the following:

- a. Acupuncture.
- b. Animal-based therapy including hippotherapy.
- c. Auditory integration training.
- d. Chelation therapy.
- e. Child care.
- f. Cranial sacral therapy.
- g. Custodial or respite care.
- h. Hyperbaric oxygen therapy.
- i. Special diets or supplements.

35.40(4) Parents or legal guardians of children diagnosed with autism spectrum disorders. A group plan shall not be required to pay for treatment rendered by parents or legal guardians who are otherwise qualified providers, supervising providers, therapists, professionals or paraprofessionals for treatment rendered to their own children.

35.40(5) Locations for services.

a. A group plan shall provide coverage for treatments, therapies and services to an insured diagnosed with autism spectrum disorders by an autism service provider in locations including the provider’s office or clinic or in a setting conducive to the acquisition of the target skill. Treatments may be provided in schools when the treatments, therapies, and services are related to the goals of the treatment plan and do not duplicate services provided by a school.

b. A group health plan is not required to provide coverage for therapy, treatment or services when the therapy, treatment or services are provided to an insured who is residing in a residential treatment center or inpatient treatment or day treatment facility.

35.40(6) Verification of qualified provider. A group health plan is required to verify the licensure, certification and all training or other credentials of a qualified provider or health professional. A group health plan shall not deny payment or reimbursement for the necessary diagnosis or treatment provided by a certified behavior analyst or a health professional licensed under Iowa Code chapter 147.

INSURANCE DIVISION[191](cont'd)

35.40(7) Annual publication CPI adjustment. The commissioner shall publish on or before April 1 of each year beginning April 1, 2014, an adjustment to the required maximum benefit equal to the percentage change in the United States Department of Labor Consumer Price Index for all urban consumers in the preceding year. The adjusted maximum benefit published each April shall be used by group health plans in order to comply with this rule and shall be effective January 1 for group plans issued or renewed on or after January 1 of the following calendar year.

35.40(8) Notice to insureds. A group plan shall provide written notice to the insured regarding claims submitted and processed for the treatment of autism spectrum disorders and shall include the total amount expended to date for the current policy year. The notice may be included with the explanation of benefits form or in a separate communication provided on a periodic basis during the course of treatment.

This rule is intended to implement Iowa Code section 514C.28.

[Filed 4/15/11, effective 6/8/11]

[Published 5/4/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.

ARC 9480B

INTERIOR DESIGN EXAMINING BOARD[193G]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544C.3, the Interior Design Examining Board hereby amends Chapter 2, "Registration," Iowa Administrative Code.

The amended subrule 2.1(4) eliminates outdated language pertaining to biennial registration renewals.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9347B** on February 9, 2011. No comments were received from the public. This amendment is identical to that published under Notice.

This amendment was adopted by the Board on April 4, 2011.

This amendment shall become effective on June 8, 2011.

This amendment is intended to implement Iowa Code section 544C.5.

The following amendment is adopted.

Amend subrule 2.1(4) as follows:

2.1(4) Applications.

~~a. Persons applying for certificates of registration on or prior to June 30, 2007, shall submit an application on a form provided by the board and shall pay a registration fee of \$350.~~

~~b. Registration certificates issued in response to applications filed on or prior to June 30, 2007, shall expire on June 30, 2009, and shall thereafter be converted to a staggered biennial renewal schedule.~~

~~c. Commencing with applications for initial or renewal registration filed on or after July 1, 2007, certificates~~ Certificates issued to registrants with last names beginning with A through K shall expire on June 30 of even-numbered years, and certificates issued to registrants with last names beginning with L through Z shall expire on June 30 of odd-numbered years. Registration fees and continuing education requirements shall be applied pro rata to those registrants whose certificates expire in less than two years.

[Filed 4/5/11, effective 6/8/11]

[Published 5/4/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.

ARC 9496B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 456A.19 and 483A.3B(3)“c”(1), the Natural Resource Commission hereby amends Chapter 22, “Wildlife Habitat on Private Lands Promotion Program,” Iowa Administrative Code.

The amendments designate the procedures used by the Department to develop a three-year pilot program whereby the Department shall create, manage, and enhance wildlife habitat on private land in exchange for allowing public access for hunting. Funding is through a Voluntary Public Access and Habitat Incentive Program Grant awarded to the Department by the U.S. Department of Agriculture, as well as from wildlife habitat fees that are designated by the Iowa Code for the development of public hunting opportunities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 12, 2011, as **ARC 9325B**. The Department held a public hearing on February 3, 2011, in the Wallace State Office Building in Des Moines. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on March 9, 2011, as **ARC 9423B** to extend the comment period and to schedule a second public hearing, which was held on March 29, 2011, also in the Wallace State Office Building. Combined, the comment period for this rule making was 74 days.

The Department received a total of 622 comments. Unfortunately, many of these comments were based on a fundamental misunderstanding of the rules and program. Therefore, these comments cannot be substantively used by the Department in the Adopted and Filed rule making. However, the majority of the comments were insightful. Many comments were in favor of the rule making, but slightly more had criticisms, suggested improvements, or were entirely against it.

Clearly, 304 comments reflected a fundamental misunderstanding of the program, its funding, and its purpose. Many of the commenters were concerned that their taxes would be raised to pay for this program, which is an unwarranted concern. Several were concerned that other programs would be underfunded or eliminated (such as preschool) to pay for this program, which is entirely inaccurate. Still more did not want to see the Department’s Trust Fund depleted to pay for this program. Importantly, the program is entirely funded from a federal grant appropriated by Congress to the U.S. Department of Agriculture for this very purpose, and Iowa’s match to the federal grant is from state wildlife habitat fees, a portion of which is dedicated for public access program development by the State Legislature. (See Iowa Code section 483A.3B(3) allocating moneys to “increase opportunities for recreational hunting on private lands” and stating that such a program shall be established “by rule” and must include “eligibility requirements for the program and procedures for applications for and approval of projects funded under the program.”) In other words, no additional tax revenue is required to fund this program, and these federal grant dollars and state match dollars cannot be used—and importantly, were not being used already—for any other government activity or program. By law, they are designated for wildlife development/public access programs only.

Additionally, several commenters expressed anger that the Department was “forcing” this program on private landowners or “compelling” landowners to participate in the program. This is entirely inaccurate as well. This program is, and has been since its inception, strictly voluntary. Only those landowners who accept the terms of the program will choose to be participants. Finally, some comments contained suggested changes to the landowner/tenant deer license system, which was not part of this rule making and, therefore, not a topic open for discussion.

The 141 comments in favor of the rule making praised the program for creating more access opportunities for Iowa, whose percentage of public land is one of the lowest in the nation; stated that increasing wildlife habitat is beneficial for both game and nongame species and that habitat development is also positive for soil and water conservation generally; praised the access programs of surrounding states and expressed excitement to see one implemented in Iowa; stated that the program is fiscally responsible as it does not impact the state’s General Fund; and stated that the program could

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provide economic development opportunities in the state by further increasing hunting and recreational opportunities.

The 177 comments in opposition to the rule making expressed concern about the following topics, each of which is followed by the Department's response:

1. How do you protect landowners from irresponsible hunters?

RESPONSE: Before initiating this program, the Department completed a survey that showed only 10 percent of Iowa landowners would be willing to participate in an access program. The Department proceeded with the program even with this low interest as the amount of moneys available would only fund approximately 3,700 acres of habitat improvement. In other words, the program could not support extremely high interest regardless. Also, this program is strictly voluntary, so only landowners who are willing to accept any and all kinds of hunters on their property will enroll. Finally, the boundaries of the areas open to public hunting will be clearly marked in accordance with the Department's Wildlife Bureau's policy on marking public wildlife management areas, and conservation officers will patrol the areas in the same manner as they patrol public wildlife management areas. The conservation officers will enforce state laws and hunting regulations on these privately owned access areas just like they do on public lands.

2. The Department can't manage existing public land so they don't need even more land to manage.

RESPONSE: First, Department employees continually strive to manage public wildlife lands and to restore them to native communities (prairie, wetlands or forests) in order to benefit the wildlife and to provide recreational opportunities in a more effective and efficient manner. These native communities are those that existed on the landscape previous to settlement. In addition, the Department collaborates with neighbors, county conservation boards, the Army Corps of Engineers, the U.S. Fish and Wildlife Service and other partners to increase work efficiencies and to obtain additional funding sources. Secondly, the Department carefully considered its ability to create and manage an access program before applying for the federal grant. The grant allowed states to apply for up to \$2 million a year for three years, yet the Department applied for only \$500,000 a year for three years to ensure that the workload this program would create could be handled by existing staff. Accordingly, the Department believes the program will be properly managed and successful for those who choose to participate in it.

3. Iowa doesn't need any more wildlife habitat.

RESPONSE: The Department has an Iowa Wildlife Action Plan (IWAP) that was congressionally mandated and published in 2005. This long-range plan outlines conservation strategies to protect Iowa's wildlife resources for the next 25 years. As required by Congress, the IWAP includes a section that evaluates the status of Iowa's wildlife and wildlife habitats. One of the conservation actions identified by the public during the development of this plan was the need to protect, restore, and enhance large areas of wildlife habitat.

4. The rule does not address liability for landowners; why should they take the risk?

RESPONSE: Landowners enrolled in this access program have very broad liability protection pursuant to Iowa Code chapter 461C. This protection has existed for many years and applies to individuals who choose to open up their private land for free (without charge) public recreational purposes. Thus, no new liability protection had to be identified or created to protect participants in this program. Under Iowa Code chapter 461C, "recreational purpose" is defined to include hunting, trapping, and nature study. (See Iowa Code section 461C.2(5).) Significantly, the owner has "no duty of care to keep the premises safe for entry or use by others for recreational purposes . . . or to give any warning of a dangerous condition, use, structure, or activity . . ." (See Iowa Code section 461C.3.) The only way a landowner enrolled in this access program (or otherwise allowing public use of the landowner's property for recreation) would face liability is if the landowner willfully or maliciously failed to guard or warn against a dangerous condition, or if the landowner charged a fee. (See Iowa Code section 461C.6.) Thus, enrolled landowners are assuming very little risk but are reaping a lot of benefit in the form of wildlife habitat development that will still exist on their property after the access agreement has expired.

5. Landowners should be able to say who is on their property for any reason, particularly hunting.

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RESPONSE: This program is entirely voluntary. Only landowners who are comfortable with unknown hunters being on their property will choose to participate.

6. There are already federal, state, and other programs that provide funding to landowners for wildlife habitat, so this program is duplicative.

RESPONSE: There are other federal Farm Bill-related programs that focus on wildlife habitat, but this is the only program that provides an incentive (habitat development and management) in exchange for public access for hunters during the appropriate seasons. Therefore, the Department feels this is a unique program in Iowa.

7. The Department did not provide enough information on contract terms and enrollment ranking criteria.

RESPONSE: The Department did not provide this information during the initial comment period, which is why the Department chose to extend the comment period and have a second public hearing so that these documents could be disseminated and commented on by stakeholders. The Department welcomed the feedback it received from the Iowa Farm Bureau concerning the contract and application form. Changes have already been made to those documents in response. The current version of both the contract and the application form are available on the Department's Web site at http://www.iowadnr.gov/wildlife/privatelands/mgt_access.html, and the contract has been incorporated by reference into this Adopted and Filed rule making. No other comments on these documents were received.

8. The current system in Iowa works. Hunters may ask permission from landowners, and landowners can choose to give permission or not based on their comfort level with the individual. There is no reason to change this approach.

RESPONSE: Most of the individuals that addressed this issue in their comments identified themselves as landowners. Conversely, Department surveys have shown time and time again that hunters who do not own land, or who own very little land, feel that access is a huge problem in Iowa. These individuals state they have a very hard time accessing private land for hunting. Frequently, the only way they get permission is if they live very close to the parcel and have a personal relationship with the owner, but even then permission is not guaranteed. Consequently, access is a major issue in hunter recruitment and retention, and this program provides a way to address that concern. Again, the landowner's participation is strictly voluntary.

9. Hunters will damage private property. Has the Department considered who is responsible for repairing that damage?

RESPONSE: Hunters who damage private land are responsible for that damage. This is the same for damage caused by hunters on public lands. The Department understands it can be challenging to identify the responsible hunter, and regular patrols and enforcement by conservation officers will assist in this effort.

10. Landowners could facilitate access on their land without government involvement if the Legislature would provide liability protection for landowners who charge for hunting on their property.

RESPONSE: This program does not limit an individual landowner's ability to lease hunting rights on their property. This approach limits private access to those who can afford to pay for the lease—frequently a premium dollar amount. Charging a fee for access means the landowner is not protected under Iowa Code chapter 461C. However, as the commenter acknowledged, this is an issue to be taken up by the Legislature, not the Department. Conversely, this program creates free access for all hunters, something that is rare in Iowa since the state owns only less than one percent of the land and water.

11. If the Department decides to keep the program, where will the funding come from to continue the program once the current grant expires?

RESPONSE: This is an excellent question and will have to be further investigated by the Department and the State Legislature. Certainly habitat fees will be available, but other funding sources will likely be needed as well. If the program is successful during its pilot stage, alternative funding sources will be pursued.

12. Hunters will assume all land is open for hunting, not just the areas agreed upon by the landowner.

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RESPONSE: Many of Iowa's neighboring states have public hunting access programs (some for several years), and they have not found that there is a misunderstanding of what land is open to public access and what is not. This is aided by well-placed boundary signs which the Department shall promptly install on all enrolled parcels.

13. The number of acres being made available in the program needs to be increased.

RESPONSE: The Department intends to maximize the number of acres enrolled but is limited to the available funds and resources. If the program is successful in its pilot stage, it is hoped that more funds will be available to increase participation later.

14. The program needs to be targeted in a small area of the state so results can be measured.

RESPONSE: Based on the Department's landowner survey, which the Department completed before applying for the federal grant and designing the program, only 10 percent of Iowa landowners expressed interest in enrolling. The Department decided statewide eligibility was important to maximize participation. There are still eligibility criteria, but no geographic regional requirement as this comment suggests. Finally, due to the criteria-based ranking system, the Department feels enrollment will be positive even if the enrolled parcels are far apart.

15. Habitat stamp fees should be spent on obtaining and managing state-owned land; access issues would be better addressed by purchasing more public land.

RESPONSE: As stated above, a certain portion of all wildlife habitat fees are set aside for public access programs pursuant to Iowa law. These funds cannot be used for any other activity or program.

16. The DNR should open up all public land to hunting instead of implementing this program.

RESPONSE: Opening up all public land to hunting is not feasible, as public land has different designations—parks, preserves, wildlife refuges, etc.—and these areas, by law, are not generally open to hunting, although some exceptions apply. This restriction is necessary because the Department must, on the state's very limited public land, provide many different kinds of recreation, some of which cannot occur simultaneously with hunting without presenting a safety risk to users.

17. This program does not benefit very many people of the state.

RESPONSE: The Department feels this program can actually benefit many citizens, including landowners who choose to enroll in the program and all of the hunters who are able to access private lands for hunting. Moreover, many outdoor recreational users, not just hunters, benefit from increased habitat. Certainly with a larger budget, even more citizens could participate in and benefit from the program, and it is hoped, after the pilot program, that will be the case.

In response to the comments received, the following changes have been made to the rule making as published under Notice of Intended Action. These changes:

1. Clarify that grant funds shall be distributed to a Department-hired contractor to complete habitat work, not directly to the landowner. However, if the landowner is properly qualified, the landowner can be hired as the contractor.

2. Incorporate by reference the Department/landowner agreement ("Iowa Management and Access Program Agreements") dated 4-15-11, which is available on the Department's Web site and at the Department's central office in Des Moines.

3. Clarify that no fee shall be charged for public access.

4. Reword the penalty formula for early terminations or breaches to ensure it is easy to understand.

5. Reference and delineate the liability protection afforded participants by Iowa Code chapter 461C.

6. Clarify the eligibility requirements to state that 40 acres of land must be opened to public access.

7. Clarify that the program is not a cost-share program; the Department is solely responsible for all habitat development cost.

8. Add wording to specify that the Department shall install and maintain "No Hunting in Standing Crops" signs in the designated access area at the landowner's discretion.

These amendments implement Iowa Code sections 456A.19 and 483A.3B(3)"c"(1).

These amendments shall become effective June 8, 2011.

The following amendments are adopted.

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ITEM 1. Amend **571—Chapter 22**, title, as follows:

**WILDLIFE HABITAT ON PRIVATE LANDS PROMOTION PROGRAM AND
HABITAT AND PUBLIC ACCESS PROGRAM**

ITEM 2. Adopt the following new Part 1 title before rule 571—22.1(456A,483A):

Part 1
WILDLIFE HABITAT ON PRIVATE LANDS PROMOTION PROGRAM

ITEM 3. Amend 571—Chapter 22, implementation sentence, as follows:

~~These~~ The rules in Part 1 are intended to implement Iowa Code sections 483A.3 and 456A.16.

ITEM 4. Adopt the following new Part 2 title after rule 571—22.9(456A,483A):

Part 2
HABITAT AND PUBLIC ACCESS PROGRAM

ITEM 5. Adopt the following new rules 571—22.10(456A,483A) to 571—22.15(456A,483A):

571—22.10(456A,483A) Purpose and authority. These rules set forth the procedures to open private lands to public hunting, while providing grant funds to create, manage, and enhance wildlife habitat. Pursuant to Iowa Code section 456A.19, all funds deposited into the state fish and game protection fund shall be expended solely in carrying on the activities of the fish and wildlife division. The department assesses a wildlife habitat fee in conjunction with each resident and nonresident hunting license sold in Iowa, and this fee is deposited into the state fish and game protection fund. At least one dollar from every wildlife habitat fee is required to be spent in a manner that increases landowner participation in federally funded conservation programs that encourage opportunities for recreational hunting on private land.

571—22.11(456A,483A) Definitions. For the purpose of this part:

“*Commission*” means the natural resource commission.

“*Department*” means the department of natural resources.

“*Program*” means the habitat and public access program.

571—22.12(456A,483A) Eligibility. In order to be eligible for this program, an applicant shall:

1. Have land in Iowa that already contains wildlife habitat or be willing to allow development of wildlife habitat;
2. Enter into an agreement with the department; and
3. Allow public access for hunting without charge on at least 40 acres.

571—22.13(456A,483A) Application procedures. Applications will be accepted only from those eligible pursuant to rule 571—22.12(456A,483A).

22.13(1) Applications. Applications must be submitted on forms furnished by the department. Applications and agreements must be received by June 1 to provide adequate time for signage on the property and to ensure that the public is aware the area is open to public hunting. However, at the department’s discretion and dependent upon the availability of funds, the application period may be extended. Landowners will be notified in writing within 30 days of submission of an application whether they have been accepted into the program.

22.13(2) Availability of funds. Funds available for this program are provided through a Voluntary Public Access and Habitat Incentive Program Grant awarded to the department by the U.S. Department of Agriculture as well as from wildlife habitat fees.

a. Funds available for assisting landowners shall be in the department’s budget in accordance with legislative appropriations. Funds will be made available during a fiscal year of July 1 to June 30.

b. To maximize the amount of wildlife habitat actually established, the department may accept contributions from any governmental agency or private conservation group to support habitat practices designed to implement the habitat and public access program. Department funds may also be used to match other funding sources or incentive programs.

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22.13(3) *Project review and selection.*

a. Projects will be reviewed by the site's regional department wildlife biologist, who, based on the ranking criteria listed in paragraph 22.13(3) "*b.*" will recommend that the commission enter into an agreement with successful applicants.

b. Projects will be selected based on the ranked scoring criteria in the application, which prioritize sites with the greatest chance of benefitting wildlife populations and providing adequate recreational hunting opportunities. The criteria include, but are not necessarily limited to: the site's habitat potential; site suitability; priority locations; and other relevant habitat and hunting access factors.

571—22.14(456A,483A) Agreements. The commission shall enter into "Iowa Management and Access Program Agreements," version 4-15-11 that is located on the department's Web site at http://www.iowadnr.gov/wildlife/privatelands/mgt_access.html as well as through the department's central office, and incorporated by reference herein, with approved landowners to carry out the purposes of this program.

22.14(1) Agreement forms shall be provided by the department. The agreement shall explicitly state the terms of the agreement including, but not limited to: the location and size of the habitat improvement; the location and size of the area open for public access hunting; the habitat improvement practices to be completed, including the standards by which the practices shall be accomplished; the schedule for completion and length of time the site shall be open for public recreational hunting; and the reimbursement rate for breaches or early terminations of the agreement as outlined in rule 571—22.15(456A,483A).

22.14(2) Grant funds. Habitat development money is only available if an agreement has been signed by both parties. No funds shall be paid directly to the landowner, but rather shall go to a habitat development contractor hired by the department. This is not a cost-share program; the department is solely responsible for all habitat development cost.

22.14(3) Agreements may be amended by mutual agreement of both parties.

22.14(4) Enrolled lands are subject to game management area hunting rules as contained in 571—Chapter 51. Access and boundary signs shall be placed and maintained on enrolled lands by the department, including "No Hunting in Standing Crops" signs at the landowner's discretion.

22.14(5) Nothing in this program or in the agreement alters or waives the liability protection afforded to private landowners opening their lands up to public recreation under Iowa Code chapter 461C. Access given pursuant to a signed agreement shall not constitute a "charge" as defined in Iowa Code section 461C.2. As stipulated in Iowa Code section 461C.4, landowners who participate in this program do not, by opening up their lands to public recreation, do any of the following:

- a.* Extend any assurance that the premises are safe for any purpose;
- b.* Confer upon such person the legal status of an invitee or licensee to whom the duty of care is owed;
- c.* Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

571—22.15(456A,483A) Cost reimbursement. Whenever a landowner has been found to be in violation of an agreement as specified in Part II of this chapter, or terminates the agreement early, the landowner shall reimburse the state a prorated amount of the value of wildlife habitat improvement work completed on the property divided by the entire agreement period multiplied by the unfulfilled years of the agreement, e.g., (Total Dollars ÷ Total Years) × Unfulfilled Years = prorated amount owed.

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Additionally, the landowner may be assessed early termination penalties that the department may be required to pay a contractor performing the wildlife habitat improvement work on the property.

The rules in Part 2 are intended to implement Iowa Code sections 456A.19 and 483A.3B(3) "c"(1).

[Filed 4/15/11, effective 6/8/11]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.

ARC 9493B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12, 321.449 and 321.450, the Department of Transportation adopts amendments to Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the March 9, 2011, Iowa Administrative Bulletin as **ARC 9417B**.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations (FMCSR) promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR), Parts 385 and 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations (HMR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

Commercial vehicles transporting goods in interstate commerce are subject to the FMCSR on the effective dates specified in the Federal Register (FR). Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the HMR on the effective dates specified in the FR. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the FR to allow a period for public comment, and after adoption, the final regulations are published in the FR. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year.

The amendments to the FMCSR and the HMR that have become final and effective since the 2009 edition of the CFR are listed in the information below. The parts affected are followed by FR citations.

Amendments to the FMCSR and Federal HMR

Parts 107, 171, 172, 173, and 180 (FR Vol. 74, No. 199, Pages 53182-53189), 10-16-09

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) adopts editorial corrections and makes minor regulatory changes to improve provisions in the Hazardous Materials Regulations. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are nonsubstantive changes and do not impose new requirements. Effective Date: October 16, 2009.

Part 172 (FR Vol. 74, No. 200, Pages 53413-53423), 10-19-09

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the Hazardous Materials Regulations to clarify requirements governing emergency response information services provided by arrangement with hazardous materials offerors (shippers). In order to preserve the effectiveness of these arrangements for providing accurate and timely emergency response information, PHMSA is requiring basic identifying information (offeror name or contract number) to be included on shipping papers. This information will enable the emergency response information provider to identify

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the offeror for which the emergency response information provider is accepting responsibility for providing emergency response information in the event of a hazardous materials incident and to obtain additional information about the hazardous material as needed. Effective Date: November 18, 2009*, with voluntary compliance authorized starting November 18, 2009. (*The effective date was published erroneously and then corrected on 10-22-09, as noted in the following Federal Register Docket.)

Part 172 (FR Vol. 74, No. 203, Page 54489), 10-22-09

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) corrected the erroneous effective date of November 18, 2009, published on Page 53413 of Volume 74, Number 200. The effective date is October 1, 2010. Voluntary compliance remained authorized starting November 18, 2009.

Parts 390, 392, and 396 (FR Vol. 74, No. 248, Pages 68703-68709), 12-29-09

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends its December 17, 2008, final rule implementing Section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The December 17, 2008, final rule makes intermodal equipment providers (IEPs) subject to certain Federal Motor Carrier Safety Regulations (FMCSRs) and establishes shared safety responsibility among IEPs, motor carriers, and drivers. These amendments create a fifth marking option for identifying the IEP responsible for the inspection, repair, and maintenance of items of intermodal equipment (IME) in response to a petition for reconsideration from the Intermodal Association of North America (IANA); clarify regulatory text and correct an inadvertent error in response to a petition for reconsideration from the Ocean Carrier Equipment Management Association (OCEMA); and extend the deadline for IEPs, motor carriers, and drivers operating IME to comply with certain provisions pertaining to driver-vehicle inspections in response to a petition filed by OCEMA. Effective Date: December 29, 2009.

Implementation Date: IEPs must establish systematic inspection, repair, and maintenance programs, record-keeping systems and identify their operations by submitting Form MCS-150C by December 17, 2009, except for the requirements of Sections 396.9(d), 396.11(a)(2), 396.12(a), 396.12(c), and 396.12(d), which they must comply with by June 30, 2010. IEPs must mark their intermodal chassis with their legal name or a single trade name and a USDOT identification number by December 17, 2010.

Part 390 (FR Vol. 75, No. 20, Pages 4996-5002), 02-01-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce for direct compensation comply with safety regulations regardless of the distance traveled. Specifically, this rule makes FMCSRs applicable to the operation of such vehicles when they are operated within a 75-air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. Motor carriers, drivers, and the vehicles operated by them will be subject to the same safety requirements imposed upon such vehicles when they are operated beyond a 75-air-mile radius. This action is required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Effective Date: May 3, 2010, with compliance with this rule required no later than June 1, 2010.

Parts 171, 172, 173, and 178 (FR Vol. 75, No. 21, Pages 5376-5403), 02-02-10

The final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the packaging requirements in the Hazardous Materials Regulations to enhance compliance flexibility, improve clarity, and reduce regulatory burdens. Specifically, the amendments revise several packaging-related definitions; add provisions to allow more flexibility when closure instructions are prepared and transmitted, including conditions under which closure instructions may be transmitted electronically; add a requirement for shippers to retain packaging closure instructions; incorporate new language that will allow for a practicable means of stenciling the "UN" (United Nations) symbol on packagings; and clarify a requirement to document the methodology used when determining whether

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a change in packaging configuration requires retesting as a new design or whether the change in packaging may be considered a variation of a previously tested design. This final rule also incorporates requirements for construction, maintenance, and use of Large Packagings. Effective Date: October 1, 2010. Voluntary compliance is authorized starting March 4, 2010.

Part 172 (FR Vol. 75, No. 45, Pages 10974-10989), 03-09-10

The final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA), in consultation with the Transportation Security Administration (TSA) of the Department of Homeland Security (DHS), modifies the current security plan requirements applicable to the commercial transportation of hazardous materials by air, rail, vessel, and highway. Based on an evaluation of the security threats associated with specific types and quantities of hazardous materials, the final rule narrows the list of materials subject to security plan requirements and reduces associated regulatory costs and paperwork burdens. The final rule also clarifies certain requirements related to security planning, training, and documentation. Effective Date: October 1, 2010. Voluntary compliance with this final rule is authorized as of April 8, 2010.

Part 107 (FR Vol. 75, No. 60, Pages 15613-15620), 03-30-10

The final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the statutorily mandated registration and fee assessment program for persons who transport, or offer for transportation, certain categories and quantities of hazardous materials. PHMSA is increasing the annual fee of \$975 (plus a \$25 administrative fee) to \$2,575 (plus a \$25 administrative fee) for registrants not qualifying as a small business or not-for-profit organization for registration years 2010-2011 and following years. The increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at approximately \$28,300,000 in accordance with the Administration's Fiscal Year 2010 budget and proposed Fiscal Year 2011 budget. Effective Date: April 29, 2010.

Parts 385, 395, and 396 (FR Vol. 75, No. 64, Pages 17208-17252), 04-05-10

The final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs) manufactured on or after June 4, 2012. On-board hours-of-service (HOS) recording devices meeting FMCSA's current requirements and installed in CMVs manufactured before June 4, 2012, may continue to be used for the remainder of the service life of those CMVs. Motor carriers that have demonstrated serious noncompliance with the HOS rules will be subject to mandatory installation of EOBRs meeting the new performance standards. If FMCSA determines, based on HOS records reviewed during a compliance review, that a motor carrier has a 10 percent or greater violation rate for any HOS regulation listed in the new Appendix C to Part 385, FMCSA will issue the carrier an EOBR remedial directive. The motor carrier will then be required to install EOBRs in all of its CMVs regardless of their date of manufacture and use the devices for HOS record keeping for a period of two years, unless the carrier (i) already equipped its vehicles with automatic on-board recording devices (AOBRDs) meeting the Agency's current requirements under 49 CFR 395.15 prior to the finding, and (ii) demonstrates to FMCSA that its drivers understand how to use the devices. The FMCSA also changes the safety fitness standard to take into account a remedial directive when determining fitness. Effective Date: June 4, 2010. Compliance Date: Motor carriers must comply with this final rule by June 4, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 4, 2010.

Parts 107, 171, 173, and 177 (FR Vol. 75, No. 93, Pages 27205-27216), 05-14-10

The final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the Hazardous Materials Regulations to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations as long

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as an equivalent level of safety is maintained. The revisions in this final rule are intended to provide greater regulatory flexibility regarding special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety. Effective Dates: October 1, 2010. Voluntary Compliance: Voluntary compliance with the provisions of this final rule is authorized June 14, 2010.

Part 391 (FR Vol. 75, No. 98, Pages 28499-28502), 05-21-10

The final rule from the Federal Motor Carrier Safety Administration (FMCSA) regulations implementing Section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) relating to medical certification requirements of CMV drivers and the submission of medical certification documents to the State Driver Licensing Agency (SDLA) links medical qualification information with the Commercial Driver License (CDL). The purpose of this rule is both to make amendments responding to petitions for reconsideration and to make technical corrections to the FMCSA regulations. Effective Date: May 21, 2010. Compliance and implementation date is January 30, 2012.

Part 390 (FR Vol. 75, No. 161, Pages 51419-51420), 08-20-10

The final rule from the Federal Motor Carrier Safety Administration (FMCSA) extends to June 30, 2011, the June 30, 2010, compliance date of its December 29, 2009, final rule concerning the inspection, repair, and maintenance of intermodal equipment (IME), specifically with respect to the requirement for drivers and motor carriers to prepare a driver-vehicle inspection report (DVIR) on an item of IME even if no damage, defects, or deficiencies are discovered by, or reported to, the driver. (Sec. 390.42(b)). This action is being taken to provide the Agency with sufficient time to address an issue raised in a petition for rule making submitted on March 31, 2010, by the Ocean Carrier Equipment Management Association (OCEMA) and the Institute of International Container Lessors (IICL). The requirements for intermodal equipment providers (IEPs) to have in place inspection, repair and maintenance programs, and a process for receiving and taking appropriate action in response to DVIRs on which damage, defects, or deficiencies are reported remain in effect. Compliance Date: June 30, 2011.

Parts 107, 171, 172, 173, 177, and 180 (FR Vol. 75, No. 169, Pages 53593-53598), 09-01-10

The final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the Hazardous Materials Regulations to correct editorial errors and makes minor regulatory changes to improve clarity. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are nonsubstantive changes and do not impose new requirements. Effective Date: October 1, 2010.

Parts 385 and 395 (FR Vol. 75, No. 176, Pages 55488-55491), 09-13-10

The final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends its April 5, 2010, final rule that established new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs). FMCSA amended requirements relating to the temperature range in which EOBRs must be able to operate and the connector type specified for the Universal Serial Bus (USB) interface. Effective Date: September 13, 2010.

Part 393 (FR Vol. 75, No. 182, Pages 57393-57396), 09-21-10

The final rule from the Federal Motor Carrier Safety Administration (FMCSA) makes permanent the existing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that trailers with antilock brake systems (ABS) be equipped with an external malfunction indicator lamp. The existing indicator lamp requirement was originally scheduled to sunset on March 1, 2009, but the National Highway Traffic Safety Administration (NHTSA) published a final rule on August 25, 2009, making permanent the requirement in the Federal Motor Vehicle Safety Standards (FMVSSs) that manufacturers equip trailers with ABS and an external antilock malfunction indicator lamp. This final rule makes the FMCSRs consistent with the August 2009 NHTSA final rule. Effective Date: November 22, 2010.

Parts 390, 391, and 392 (FR Vol. 75, No. 186, Pages 59118-59136), 09-27-10

TRANSPORTATION DEPARTMENT[761](cont'd)

The final rule from the Federal Motor Carrier Safety Administration (FMCSA) adds texting while driving to the list of disqualifying offenses under state or local traffic laws or ordinances that prohibit texting by CDL drivers while operating a CMV and imposes sanctions, including civil penalties and disqualification from operating CMV for drivers who fail to comply with this rule. Additionally, motor carriers are prohibited from requiring or allowing their drivers to engage in texting while driving. FMCSA amends its commercial driver's license (CDL) regulations to state or local traffic laws or ordinances that prohibit texting by CDL drivers while operating a CMV, including school bus drivers. Effective Date: October 27, 2010.

Parts 171, 173, and 178 (FR Vol. 75, No. 189, Pages 60333-60340), 09-30-10

On February 2, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule amending the Hazardous Materials Regulations (HMR) to: revise several packaging-related definitions; add provisions to allow more flexibility when closure instructions are prepared and transmitted, including conditions under which closure instructions may be transmitted electronically; add a requirement for shippers to retain packaging closure instructions; incorporate new language that allows for a practicable means of stenciling the United Nations (UN) symbol on packagings; and clarify a requirement to document the methodology used when determining whether a change in packaging configuration requires retesting as a new design or whether the change in packaging may be considered a variation of a previously tested design. The February 2, 2010, final rule also incorporated requirements for the construction, maintenance, and use of Large Packagings. This final rule responds to one petition for reconsideration and four appeals submitted in response to the February 2, 2010, final rule and also corrects several errors that occurred in that rule making. Because these amendments do not impose new requirements, notice and public comment procedures are unnecessary. Effective Date: October 1, 2010.

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective June 8, 2011.

Rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, ~~2009~~ 2010).

ITEM 2. Amend paragraph **520.1(1)“b”** as follows:

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~2009~~ 2010).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.

ARC 9494B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.2, and 477A.12 and 2010 Iowa Acts, chapter 1126, the Utilities Board (Board) gives notice that on April 14, 2011, the Board issued an order in Docket No. RMU-2010-0003, In re: Revisions to Rules Governing Certificates of Franchise Authority for Cable and Video Service [199 IAC 44], “Order Adopting Amendments.” The order summarizes the comments

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received in response to the proposed amendments. The order adopted amendments which were published under Notice of Intended Action in IAB Vol. XXXIII, No. 9 (11/3/2010), p. 693, as **ARC 9198B**.

The amendments revise the Board's rules at 199 IAC 44 regarding certificates of franchise authority for cable and video service providers to reflect legislative changes in 2010 Iowa Acts, Senate File 2324 (2011 Iowa Code sections 477A.2(4) and 477A.3).

The order adopting amendments is available on the Board's Web site at www.state.ia.us/iub.

Item 1 amends rule 199—44.1(17A,476,82GA,SF554) to update references and remove language pertaining to filing fees.

Item 3 (Item 2 of the published Notice of Intended Action) amends subrule 44.3(3), which specifies the requirements for an initial application for a certificate of franchise authority. The amendment extends the time in which the Board must issue a certificate or notify an applicant that an application is incomplete from 15 business days to 30 calendar days. The amendment adds a statement, consistent with 2010 Iowa Acts, Senate File 2324, that the Board shall not issue a certificate unless the Board finds that all requirements in paragraphs 44.3(3)"a" through "i" have been met. The amendment also provides that the Board may take an additional 60 days to determine whether the requirements in new paragraphs 44.3(3)"g," "h" and "i" have been met. Paragraph 44.3(3)"g" requires an applicant (other than an applicant with a Board-issued certificate of public convenience and necessity to provide telephone service pursuant to Iowa Code section 476.29) to include documentation that it possesses sufficient managerial, technical, and financial capability to provide service. Paragraph 44.3(3)"h" requires an applicant to provide copies of advertisements or news releases announcing the applicant's intent to provide service; the new language provides that if such advertisements or news releases are not available at the time the application is filed, the applicant shall file copies with the Board when they are available. Paragraph 44.3(3)"i" requires an applicant to include a schedule of dates by which the applicant intends to commence operation in each municipality it proposes to serve and to file updates to the schedule.

The amendment in Item 3 also moves existing language relating to service area descriptions from the end of existing rule 199—44.3(17A,476,82GA,SF554) to paragraph 44.3(3)"d."

In Item 4 (Item 3 of the published Notice of Intended Action), the Board adds the new notice of application required by 2010 Iowa Acts, Senate File 2324. This amendment revises rule 199—44.4(17A,476,477A) to add the new requirement in subrule 44.4(2) that a competitive provider notify affected municipalities that the provider has applied for a certificate of franchise authority from the Board; to add catchphrases to distinguish between the types of notices; to group together in one subrule all provisions relating to notice of intent to provide service; to specify that all required notices shall be sent by certified mail; and to specify that the competitive service provider must file with the Board a copy of the notice of intent to provide service on the date the notice is provided.

Item 6 (Item 4 of the published Notice of Intended Action) rescinds rule 199—44.6(17A,476,82GA,SF554) (which contains the filing fees associated with applications and subsequent notices) and adopts in lieu thereof a new rule corresponding to the provisions of 2010 Iowa Acts, Senate File 2324, dealing with revocation of certificates and reinstatement of previously terminated municipal franchises. New subrule 44.6(1) authorizes the Board to revoke a certificate in the event a certificate holder fails, within 12 months from the date the application was granted, to commence operation of the cable or video service proposed in its application. New subrule 44.6(2) provides for reinstatement, under certain circumstances, of a municipal franchise agreement previously in effect between the incumbent cable operator and municipality before the agreement is terminated after notice from the competitive service provider of its intent to provide service, i.e., the competitive service provider whose certificate is revoked pursuant to subrule 44.6(1). New subrule 44.6(3) specifies that if a certificate holder ceases to engage in construction or operation of a cable system or video service network and is no longer providing service, the certificate holder must notify the affected municipality, the Board, and the incumbent cable operator on the date that construction or service is terminated. Subrule 44.6(3) also provides for reinstatement of a previous municipal franchise when a certificate holder ceases construction or is no longer providing service.

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Item 7 (Item 5 of the published Notice of Intended Action) adds new rule 199—44.7(17A,476,477A), which allows the Board to assess its costs directly to the person filing an application for a certificate of franchise authority or subsequent notice regarding the certificate or any other proceeding relating to a certificate of franchise authority.

Item 8 (Item 6 of the published Notice of Intended Action) amends the implementation sentence in Chapter 44.

Two nonsubstantive changes have been made to the amendments as published under Notice of Intended Action. New Items 2 and 5 have been added to update the parenthetical implementation statutes for rules 199—44.2(17A,476,477A,82GA,SF2248), 199—44.3(17A,476,477A,82GA,SF2248), and 199—44.5(17A,476,82GA,SF554), and the existing items have been renumbered accordingly. In addition, the phrase “or operation of a cable system or video service network” has been deleted from the first sentence of subrule 44.6(3) because it duplicated other language in the sentence, and the term “cable or video service system” in the last sentence of subrule 44.6(3) has been corrected to read “cable system or video service network.”

These amendments are intended to implement Iowa Code sections 17A.4, 476.2 and 477A.12 and 2010 Iowa Acts, Senate File 2324.

These amendments will become effective on June 8, 2011.

The following amendments are adopted.

ITEM 1. Amend rule 199—44.1(17A,476,82GA,SF554) as follows:

199—44.1(17A,476,82GA,SF554 477A) Authority and purpose. These rules are intended to implement ~~2007 Iowa Acts, Senate File 554~~ Iowa Code chapter 477A, relating to certificates of franchise authority issued by the board for the provision of cable service or video service. The purpose of these rules is to establish procedures ~~and filing fees~~ for initial applications for and subsequent modifications, transfers, terminations, or updates of certificates of franchise authority issued by the board.

ITEM 2. Amend rules **199—44.2(17A,476,477A,82GA,SF2248)** and **199—44.3(17A,476,477A,82GA,SF2248)**, parenthetical implementation statute, as follows:

(17A,476,477A,82GA,SF2248)

ITEM 3. Amend subrule 44.3(3) as follows:

44.3(3) Initial application. Within ~~15-business~~ 30 calendar days after receiving an application and affidavit from an applicant using a form developed by and available from the board, the board shall issue a certificate of franchise authority or notify the applicant that the application is incomplete. The board shall not issue a certificate of franchise authority to an applicant unless the board finds that all of the following requirements have been met. If the board needs additional information to determine whether the requirements in paragraphs “g,” “h” and “i” are met and that determination cannot be made within the initial 30-day period, the board may docket the application for further review and take an additional 60 calendar days to make that determination. The application must be signed by an officer or general partner of the applicant and shall provide the following information:

a. A statement that the applicant has filed or will timely file with the Federal Communications Commission (FCC) all forms required by the FCC in advance of offering cable service or video service in Iowa;

b. A statement that the applicant agrees to comply with all applicable federal and state statutes, regulations, and rules;

c. A statement that the applicant agrees to comply with all applicable state laws and nondiscriminatory municipal ordinances and regulations regarding the use and occupation of a public right-of-way in the delivery of the cable service or video service, including the police powers of the municipalities in which the service is delivered;

d. A description of the service area to be served and the municipalities to be served by the applicant, including descriptions of unincorporated areas, if applicable; The service area description must be sufficiently detailed to enable the board to ascertain the boundaries of the applicant’s proposed

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service area. Applicants certificated by the board as local exchange carriers pursuant to Iowa Code section 476.29 may choose to refer to descriptions (including maps) of local exchange service areas on file with the board.

e. The address of the applicant's principal place of business and the names and titles of the applicant's principal executive officers with direct authority over and responsibility for the applicant's cable or video operations; and

f. The telephone number for customer service contact.

The service area description must be sufficiently detailed to enable the board to ascertain the boundaries of the applicant's proposed service area. Applicants certificated by the board as local exchange carriers pursuant to Iowa Code section 476.29 may choose to refer to descriptions (including maps) of local exchange service areas on file with the board.

g. Documentation that the applicant possesses sufficient managerial, technical, and financial capability to provide the cable service or video service proposed in the service area. An applicant or its subsidiary which has a board-issued certificate of public convenience and necessity to provide telephone service pursuant to Iowa Code section 476.29 shall be exempt from the provisions of this paragraph.

h. Copies of advertisements or news releases announcing the applicant's intent to provide cable service or video service in the service area intended for release if the certificate of franchise authority is granted. If such items are not available at the time the application is filed, the applicant shall file copies with the board when they become available.

i. A schedule of dates by which the applicant intends to commence operation in each municipality proposed to be served within the service area. The applicant shall file timely updates to this schedule to maintain accuracy.

ITEM 4. Amend rule 199—44.4(17A,476,82GA,SF554) as follows:

199—44.4(17A,476,82GA,SF554 477A) Notice to municipality and incumbent cable provider. A competitive service provider shall notify affected municipalities and incumbent cable providers of its plan to offer service as provided in this rule.

44.4(1) *Notice of intent to provide service.* At least 30 days before providing service in any part of a competitive cable or video service provider's certificated service area in which the provider has not yet offered service pursuant to a board-issued certificate of franchise authority, a competitive cable service provider or competitive video service provider shall notify each municipality with authority to grant a franchise in the part of the competitive provider's service area to be served and the incumbent cable provider in that area that the competitive provider will provide service within the jurisdiction of the municipality and when such service will begin. All notices required by this subrule shall be sent by certified mail. A competitive cable service provider or competitive video service provider shall not provide service without having provided the notice required by this rule.

44.4(2) *a.* The competitive cable service provider or competitive video service provider shall file a copy of the notice required by this rule with the board on the date that the notice is provided.

44.4(3) *b.* If the competitive cable service provider or competitive video service provider determines that its entry into the market will be delayed, no further notice will be required unless market entry is delayed for more than 30 days after the date service was expected to begin.

44.4(2) *Notice of application.* In addition to the notice of intent to provide service, an applicant shall notify each municipality with authority to grant a franchise in the applicant's proposed service area that the applicant has filed an application with the board for a certificate of franchise authority. This notice shall be mailed on the date the application is filed with the board and shall be sent by certified mail.

ITEM 5. Amend rule 199—44.5(17A,476,82GA,SF554), parenthetical implementation statute, as follows:

(17A,476,82GA,SF554,477A)

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ITEM 6. Rescind rule 199—44.6(17A,476,82GA,SF554) and adopt the following new rule in lieu thereof:

199—44.6(17A,476,477A) Revocation of certificates, termination of service, reinstatement of previously terminated municipal franchises.

44.6(1) *Certificate holder fails to commence operation.* If a certificate holder fails to commence operation of the cable service or video service proposed in its application within 12 months from the date the board granted the certificate holder's application, the board may determine that the certificate holder is not in compliance with the certificate and may revoke the certificate. The board shall notify any incumbent cable operator affected by the revocation.

44.6(2) *Reinstatement of previously terminated municipal franchise upon revocation.* In the event a certificate is revoked as provided in subrule 44.6(1), the municipal franchise agreement which was in effect between the incumbent cable provider and municipality before being terminated pursuant to Iowa Code section 477A.2(6) and rule 199—44.5(17A,476,477A) after the certificate holder filed its notice of intent to provide service shall be reinstated for the remaining duration of the municipal franchise agreement, provided that the agreement would have remained in effect for at least 60 days prior to termination and provided that the municipal franchise agreement was terminated after April 12, 2010. Within 90 days of receiving notice from the board that a certificate has been revoked as provided in subrule 44.6(1), the incumbent cable provider shall comply with the terms of the previous municipal franchise agreement.

44.6(3) *Certificate holder ceases to provide service.* In the event a certificate holder ceases to engage in construction or ceases operation of a cable system or video service network and is no longer providing service, the certificate holder shall notify the affected municipality, the board, and the incumbent cable provider on the date that construction or service is terminated. If the municipal franchise agreement which was in effect between the incumbent cable provider and the municipality before being terminated pursuant to Iowa Code section 477A.2(6) and rule 199—44.5(17A,476,477A) after the certificate holder filed its notice of intent to provide service would have remained in effect for at least 60 days prior to termination and was terminated after April 12, 2010, the agreement shall be reinstated and shall be in effect for the remaining term of that agreement. The incumbent cable provider shall comply with the terms of the previous municipal franchise agreement within 90 days of notification by the certificate holder that it has ceased construction of a cable system or video service network or is no longer providing services.

ITEM 7. Adopt the following new rule 199—44.7(17A,476,477A):

199—44.7(17A,476,477A) Assessment of board costs. The board may allocate and charge the expenses attributable to its duties pursuant to Iowa Code chapter 477A directly to the person filing an application for a certificate of franchise authority or subsequent notice regarding a certificate issued by the board or any other proceeding relating to a certificate of franchise authority.

ITEM 8. Amend **199—Chapter 44**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 17A.4 and 476.10 and ~~2007 Iowa Acts, Senate File 554~~ chapter 477A.

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